DEBATES AND PROCEEDINGS OF THE FIRST CONSTITUTIONAL CONVENTION OF WEST VIRGINIA

VOL. II

Vol. II.

DEBATES AND PROCEEDINGS

OF THE

First Constitutional Convention of West Virginia

(1861, 1862, 1863)

XXIII. WEDNESDAY, JANUARY 8, 1862.

The Convention was opened with prayer by Rev. R. L. Brooks, member from Upshur.

Minutes read and approved.

THE PRESIDENT. The question is on the adoption of the thirty-second section of the second report of the Committee on the Legislative Department.

MR. STEVENSON of Wood. Mr. President, before the Convention proceeds to the regular business, I would wish to offer a resolution.

The Secretary reported it:

"RESOLVED, That the sergeant-at-arms be authorized to give up the rooms at present used by the committees of the Convention."

MR. VAN WINKLE. I would like to know what the facts are, sir. The rooms were hired for a certain period. There is no use giving them up before the time is out.

MR. STEVENSON of Wood. I will state that I suppose the Convention will still be in possession of the rooms until the expiration of the month—that is, the month which will expire sometime during this month; I think about the twenty-fifth, I believe, and, of course, they will not be given up until that time. I suppose the business of the committees generally is through with. There are some two committees that have not yet reported, but there is a room in connection with this building.

MR. VAN WINKLE. Four have not yet reported.

MR. STEVENSON of Wood. It will throw us into an additional expense of some twenty-five dollars if the rooms are retained after this month expires.

MR. VAN WINKLE. If the time is as long off as the twenty-fifth, I would ask that the resolution lie on the table. The committee on the schedule has a good deal to do; the Committees on Taxation and Education have not reported; the Committee on General Provisions have a further report to make; and I think there is yet another committee. Well, the Committee on Boundary is not through. However, that is but a trifling matter, to report a revision. Well, the Committee on Revision: their work will last to the end. I think it had better lie on the table a few days, with the consent of the mover.

THE PRESIDENT. Does the gentleman consent?

MR. STEVENSON of Wood. I have no objection.

THE PRESIDENT. The delegate from the county of Clay is in the Convention, and I believe is reported entitled to a seat, and if so, he will come forward and be sworn.

Mr. Stephenson of Clay came forward to the Secretary's desk and took the required oath.

THE PRESIDENT. If there are no further resolutions or petitions, the next thing in order will be the thirty-second section of the report of the Committee on the Legislative Department.

MR. LAMB. I move the adoption of that, sir. The Clerk will read it.

The Secretary reported it.

"32. The presiding officers of each branch shall sign publicly,

in the presence of the branch over which he presides, while the same is in session, all bills and joint resolutions passed by the legislature."

MR. SOPER. Mr. President, I move to strike out the words: "In the presence of the branch over which he presides while the same is in session." I do this, sir, because I apprehend that it may place the legislature in an unpleasant predicament on the last day at the close of its session. I suppose, sir, that on that day the third reading of bills will occupy the greater part of its time, and amendments may be made; and it will be almost impossible to have those bills which have received their last reading engrossed for the signature of the presiding officer during the session of the legislature. If these words are stricken out the section will then read: "The presiding officers of each branch shall sign publicly all bills and joint resolutions passed by the legislature."

MR. LAMB. I would suggest to the gentleman that if his amendment should pass, whether it would not be necessary that the word "publicly" should go too.

MR. SOPER. Well, sir, perhaps it would.

MR. LAMB. Just leave out that the presiding officer shall sign. I must leave the discussion of the amendment to gentlemen more familiar with legislation than I am. The object of the provision is to secure all possible guards against any mistakes being committed in regard to bills which have been passed by the legislature, to have all possible care taken that only the bills which were actually passed by the legislature shall be signed. For that reason it is proposed he should sign in the presence of the branch. But gentlemen who are more familiar with the course of legislation are better capable of saying what ought to be done with this section than I am.

MR. SOPER. I know it is advisable, sir, to have this done in the presence of the legislature if it can be. If the Convention shall see fit to retain these words, I then propose this as an addition, to come in at the end of the section: "But no bill shall be put on its final passage on the last day of the session."

MR. POMEROY. I think it would be better to strike that out than to substitute what the gentleman proposes if it is retained. I cannot see any necessity of retaining this condition. The presiding officer shall sign all bills and joint resolutions passed by

the legislature "publicly in the branch over which he presides." If the legislature were not present when he signs, I do not think it is a matter of any importance. I am in favor of the motion of the gentleman to strike out.

THE PRESIDENT. Does the Chair understand the gentleman as modifying his proposition?

MR. SOPER. No, sir; I merely stated I would offer this addition in case the Convention should be for retaining the words which I proposed to strike out. If it is supposed to be necessary to require that this act shall be done by the speaker or president while the legislature are in session—if this is the wish of the Convention—then I propose that amendment. My motion is just to strike out those words.

THE PRESIDENT. The question is on the motion of the gentleman from Tyler.

MR. STEVENSON of Wood. I would like to hear it read, Mr. President.

The Secretary read the section omitting the words: "Publicly in the presence of the branch over which he presides while the same is in session."

MR. STUART of Doddridge. I am decidedly in favor of the motion, from the fact that I can see no good reason for retaining those words. I suppose these bills will be furnished to the presiding officer by the clerk. Suppose a bill is furnished this morning to the president; he desires to examine it, to satisfy himself that it is a bill that has passed this body. What advantage to say that he shall decide it now there or take it to his room and decide it. We would not know anything more about it. I suppose he would not call our attention to it; and if he did I suppose we would have general contention and every member would want to know whether it was proper to be signed or not. It would lead to delay, trouble and contention.

MR. VAN WINKLE. Will the gentleman from Doddridge tell us what is the practice. My impression is that all bills are signed before the adjournment. I know the President of the United States goes to one of the committee rooms and signs bills as fast as they are brought to him. I presume he could sign either before or after the adjournment, but the bill would not become a law until

it was signed. I think that is the construction put on the matter heretofore at Richmond. Whether they had this clause in the constitution or not, I do not remember. I thought perhaps the gentleman from Doddridge could inform us. What is the practice in that respect? My understanding is that the president signs the bill after adjournment.

MR. STUART of Doddridge. There was a committee appointed to examine enrolled bills and that committee signed them—is my understanding.

MR. VAN WINKLE. Certifies them only. My impression is that the practice is to sign them before adjournment.

MR. LAMB. So far as we can derive any information on this subject from the different states we find that provisions, some in the same shape as the one reported, and some in the shape in which it would be if the amendment of the gentleman from Tyler is adopted. I will read: The Constitution of the State of Ohio provides "The presiding officer of each house shall sign publicly in the presence of the house over which he presides, while the same is in session and capable of transacting business all bills and joint resolutions provided by the general assembly." The Constitution of Indiana, on the other hand, provides: "All bills and joint resolutions which shall be passed shall be signed by the presiding officers of the respective houses," without saying either way.

The amendment was agreed to, and the question recurred on the section as amended.

MR. HERVEY. I move to add after the word "legislature" the words: "Prior to its adjournment." It seems to me that bills might perhaps, be retained for weeks after the adjournment of the house before signing; and it would seem to be more proper that the business of the session should be done up before the adjournment. I think this would be a safe condition.

MR. STUART of Doddridge. Will the Clerk report the amendment.

MR. VAN WINKLE. I would suggest to the gentleman that to bring in these words where he proposes, it would seem to refer, if the bills have been passed before the adjournment. I understand his meaning is that they shall be signed before the adjournment. Let the words come in after "sign."

THE PRESIDENT. Does the gentleman from Brooke accept the suggestion?

MR. HERVEY. Yes, sir.

MR. SOPER. This amendment, sir, is equivalent to the words just stricken out.

MR. VAN WINKLE. Only a part of them.

MR. SOPER. Well, to the material part of them. The objection is this, that on the last day of the session, which is occupied mostly in the third reading of bills and to which amendments are made. Now after that those bills that have been read the last time, it may require a large number of clerks to do the engrossing, and if the legislature should keep in session until midnight, at the close of the day, as they oftentimes do on the last day, why here would be bills probably a large amount of them passed just at the close of the legislature when it would be impossible to engross them and have them signed during the session of the legislature. I think the amendment offered by the gentleman from Brooke will involve the difficulty that I suggest.

MR. VAN WINKLE. I do not think, sir, that any particular difficulty about this engrossment. Most of the bills the parties interested in have them engrossed and all right. They have passed probably the stage of amendment. They may put on a "rider" after that stage. But although I have never been in the legislature at the close of the session when I had anything to do with it, yet I have had bills passed through there and where coming pretty close to the close of the session we always got them engrossed and had them ready. I think the amendment of the gentleman from Brooke ought to prevail, because if not required to sign them during the session they may take their own time to do it. The general system is to say that the law shall be in force from its passage. Now, the question is whether it is passed until it is signed. I do not think the law is passed. The legislature may have voted to pass it, but if there is any formality that remains to be complied with, it certainly has not passed, and I think it cannot be considered passed until signed by the officers of the two houses. Well the practice hanging, as it were, on the same words, the interpretation would have already been given. And that would still be held, I presume, to be the rule, that the bills

must be signed. But I think the words had better come in, to leave no doubt about the meaning. I think it is entirely proper. If there was no such practice to govern us, it is entirely proper that bills should be signed before the house adjourned. I shall favor the amendment.

THE PRESIDENT. The Chair would remark that they commence signing bills from the very commencement of the session. A bill is got up in the house to meet a contingency that requires prompt action by the legislature; or perhaps on the very first day of the session a bill is passed through and signed. I have certainly known it as early as the fifth day of the session.

MR. VAN WINKLE. Yes, sir; but the point is, the proceedings on the last day. Are not all the bills signed before the actual adjournment? Ten members can stay and make the adjournment.

THE PRESIDENT. Always signed before the adjournment; but he may sign very long before the adjournment. Very many of them are signed and copies sent out and go into effect long before the close of the session. You will find very many bills on your acts that went into effect before the adjournment of the legislature.

MR. RUFFNER. Mr. President, it will be remembered that the usual course in the legislature is that as bills have been passed and they are examined by the committee on enrolled bills and reported upon, they are in a condition to be signed; and that process goes on throughout the session of the legislature.

MR. VAN WINKLE. I would ask the gentleman if the committee on enrolled bills do not sit continuously during the last two or three days of the session?

MR. RUFFNER. Yes, sir.

MR. VAN WINKLE. I want to call attention whether I am right in stating that the bills are all signed before the actual adjournment. I think we had better make it specific, so as not to leave any doubt.

MR. LAMB. I have been in Richmond in the last days of the session. I recollect staying up one night to see it through. Bills after reported on by the committee on engrossment were signed by the speaker before the adjournment. The legislature had to keep in existence until the bills were all regularly signed.

MR. BROWN of Kanawha. Mr. President, I desire to inquire what the question is.

The Secretary reported the motion made by Mr. Hervey to add the words "prior to adjournment" after the word "legislature."

The amendment was agreed to and the section adopted as amended.

The next section was reported as follows:

"33. Each branch shall keep a journal of its proceedings, and cause the same to be published from time to time; and the yeas and nays on any question, shall at the desire of one fifth of those present, be entered on the journal."

MR. POMEROY. I move its adoption.

MR. SOPER. I move to strike out: "and the yeas and nays on any question shall at the desire of one-fifth of those present be entered on the journal." The section will then read:

"33. Each branch shall keep a journal of its proceedings, and cause the same to be published from time to time."

Now, if I understand the object of calling for the yeas and nays on any question it is that they shall appear on the journal.

MR. VAN WINKLE. The gentleman is mistaken. The custom is—although we have not observed it here in the Convention though it was in the convention of 1850. A gentleman would call for the yeas and nays and they were ordered and taken, and then followed another motion that they be entered on the journal. That was the uniform practice there.

MR. SOPER. It was to obviate that that I moved to strike out; because as the whole section reads they would never appear on the journal unless a motion was made that they should be entered there.

MR. LAMB. The section as it stands is an exact copy of the provision in the Constitution of the United States, which is the supreme law of the land, at any rate. A pretty good precedent for us to follow.

MR. SOPER. One moment. We hear a great deal about old constitutions—the Constitution of the United States. That was a most excellent instrument when it was formed; but many people

suppose we are living in an age of great progress and improvement, and that at all events they have had the benefit of experience. Now it appears to be the great object here shortening sessions and curtailing expenses, and various other improvements; and in all modern times that appears to be the prevailing sentiment among the people as well as bodies of this description—I mean this Convention, other conventions and our legislatures. Now, if that is so, we had better be very explicit here in forming our Constitution, to see that it will be clearly understood; and if it be true that there can be no object in calling for the yeas and nays upon any question unless it be that it shall go forth to the public how the gentlemen have voted on that question, I insist in every case they ought to be placed on the journal, if that is the object in calling them, in every instance. But the yeas and nays may be called and taken, gentlemen may not be conversant with this provision of the Constitution; there may be no rule before them, and they may omit to make the motion, and the very object they had in view in having the yeas and nays stated, namely to make it public, may not be attained.

MR. VAN WINKLE. I would like to say, sir, through you, to my friend from Tyler, that the question here is not one of authority. It is a question of practice. What is the understanding of these provisions, as the gentleman from Ohio reads the Constitution of the United States to show that the language is the same. Well now, we know that under the Constitution of the United States the Congress of the United States do not enter its votes on the journal unless a motion was made to put them there. I cited the proceedings of the convention of 1850, which was composed of those familiar with the mode of doing business in the legislature of Virginia; and I am very decidedly of opinion, because I have seen it printed in the journal, a copy of which I have had here and have now at my room, that in every case a motion was made to enter the yeas and nays in the journal. Now, sir, here we require that on the passage of a bill the yeas and nays shall be taken and entered on the journal, but the yeas and nays are frequently called on "tuppeny" amendments and very frequently unnecessarily called, for it means nothing. Now suppose we strike this out, will not the interpretation be precisely the same? Will the yeas and nays be entered on the journal going back to the practice that prevails throughout legislative bodies in this country? And the general practice, unless there is something specific

on the subject? Will it not be then that that law will do precisely what this clause that is proposed to be stricken out requires them to do? If the object is to prevent the necessity for this, let the gentleman substitute a clause to the effect that the yeas and nays shall be called and shall be entered on the journal. I think one-fifth ought to be the number to require the yeas and nays to be called, but a mere vote should enter it on the journal. I should think perhaps it is susceptible of amendment in that way. If it is not stricken out, it ought to read: "and the yeas and nays on any question shall, at the desire of one-fifth of those present be called and be entered on the journal."

MR. LAMB. "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." I take it that in this provision there is no such thing as a call for the yeas and nays, distinct from entering it on the journal. If one-fifth of the house rise to a call for the yeas and nays, it is an order to enter them on the journal.

MR. VAN WINKLE. It does not say so.

MR. LAMB. I take it that it does say so. The Constitution of the United States, which is like the provision here, does not contemplate a call for the yeas and nays distinct from an order for entering them in the journal. A call for the yeas and nays is an order to enter them on the journal, and necessarily so under the language used. That has been the construction I have always given to it. Our own rules appear to contemplate the same thing. The call for the yeas and nays is the same as an order to enter them on the journal. "Any member" says the Rule, "seven others concurring, shall have a right to demand the yeas and nays on any question, etc." It is not necessary to make any other order upon it. That is the rule of this body. Such I take it is the clear meaning of the language used in this case.

MR. POMEROY. Mr. President, I am in favor of this section as it stands and the more so with the explanation that has been made. I think there are two objects in calling for the yeas and nays, if I understand why they are called. One is to get the correct vote of the body without any liability to mistake. That is one object. I think it is impossible for the best presiding officer in the world always to decide correctly by the sound of "ayes" and "noes"; and after calling for those who are in favor to say "aye" and those

opposed to say "no" it appears that a great number of the members do not vote either way. So there is only the vote of a small part of the members on the subject. But when you call the roll, the members all vote (unless excused). But the great object, I suppose, is that a man may be placed on the record and that it may go out to the world how he voted. I think this provision is wise. A captious individual in the legislature, thinking he was voting right and everybody else wrong might demand the yeas and nays and not get them; but if one-fifth of the body agree with him in the demand, the yeas and nays are called, and I think that number ought to have the right to do so. There is a great deal said just now about votes that have been taken in this body, but I am very glad that our names are on the record. And I think that is right; that the yeas and nays should be called at the desire of one-fifth and entered on the journal. I understand it as the gentleman from Ohio, that the great object is that they may go on the journal. Our other votes do not. It is only said that the motion prevailed or was rejected; but it doesn't say how the members voted; but if the yeas and nays are called, it goes out how we did vote. It gives one-fifth the power to have the vote recorded. I think it is a good provision, and am in favor of the section as it stands.

MR. SOPER. My object, sir, in making the motion was to leave this matter of calling the yeas and nays and putting them on the journal to be regulated by the rules of the body—legislature or convention or whatever it might be; not place it here in the Constitution which probably could not be varied. Now "each branch shall keep a journal of its proceedings and cause the same to be published from time to time." That would require that the yeas and nays taken on every occasion should go on the journal. It would be part of the proceedings. It would be necessary to be published. If, however, the body should see fit to pass such a rule as we have adopted here, or should qualify it in any other way, that a portion of the yeas and nays called should not be placed on the record, why they would have the power of doing so. Indeed, I can conceive very well where a captious individual in a legislative body if he should be displeased and should want to gratify his spleen might demand to call the yeas and nays on almost every question—frivolous and unimportant question—where they never ought to have been called and much less ought to go on the journal. I can conceive that, sir, and there is no remedy to guard against it

unless it be by a rule of the body requiring that a certain portion of the body should concur in the call for the yeas and nays, and also requiring that the same number or a larger number should require the yeas and nays to be placed on the journal.

If my motion prevails, sir, then this whole matter of yeas and nays—the taking of them and publishing of them—will be controlled by a rule to be passed by the body.

MR. BROWN of Kanawha. The difficulty with me would be that under the provision in the Constitution of the United States, and it is copied here, a different construction has grown up in the country. Whether one or the other is right is not the matter for us to determine because some other body might determine it differently; but for us it seems to me the duty is to determine upon something definite that will not be changed hereafter if we intend to fix this question in the Constitution at all. It seems to me that whenever the yeas and nays are called by one-fifth of the body—and they ought not to be required unless a fifth did call for them they ought to be entered on the journal at once without any further motion; and inasmuch as I consider it something gained to avoid the necessity of a separate motion to put them on the journal after they have been called for and taken and that is the real thing to be desired in this matter, I propose an amendment as follows: insert after "yeas and nays on any question" the words, "being called for by one-fifth of those present shall be entered on the journal" without any further voting about it. I was not able to catch the amendment of the gentleman from Tyler.

MR. SOPER. My amendment was to strike out and leave it subject to a rule, hereafter.

I have no objection to that proposition.

MR. VAN WINKLE. Well, sir, the form in which it is now proposed to make it will meet my views exactly.

I would take this opportunity to say, Mr. President, that there are none of these matters about which I would be tenacious. What I want is that they should be clearly expressed, whatever the rules are, and they may be clearly understood either by the current interpretation given to similar principles elsewhere or by additional words inserted here, as now proposed, so that there shall be no mistake about it. I know for myself my experience in legislative

matters is exceedingly limited. I have never been a member of the legislature. I have had only the same opportunity of watching their proceedings as others, except that I have been there during several sessions interested in the passage of several bills. But my experience, limited as it is—and we are an inexperienced body—does not seem to be exceeded by that of any other member; and I think we can do no harm by putting down explicitly what we do mean. The amendment of the gentleman from Kanawha will put the section into such a form that I think it cannot be mistaken.

The Secretary reported the section as it would read if the amendment should be adopted:

"33. Each branch shall keep a journal of its proceedings and cause the same to be published from time to time, and the yeas and nays on any question, *if called for by one-fifth of those present shall be entered on the journal.*"

The amendment was agreed to; and the section adopted as amended.

The next section was reported.

"34. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money, shall be published from time to time."

MR. LAMB. Mr. President, I am informed that the Committee on Finance will report a section on the subject; and perhaps as their report is not in, it would be but common courtesy to lay this over until their report is presented.

THE PRESIDENT. The question is on passing by the thirty-fourth section.

It was agreed to pass the section by for the present.

The next section was reported.

"35. The legislature, in cases not provided for in this Constitution, shall prescribe by law the terms of office, powers, duties and compensation of all officers of the State, and the manner in which they shall be appointed and removed."

MR. LAMB. Mr. President, it struck me that this section is not sufficiently comprehensive. If we attempt at all in the Constitution to define the powers which the legislature may exercise in reference to the officers of the State will not the construction arise

that the expression of one thing is the exclusion of another? May they not be excluded from the exercise of powers in regard to officers that they ought to possess by the fact that we have expressly granted them certain powers, necessarily implying that they are to be excluded from others? I would prefer making the section a little more comprehensive, and putting the eleventh and thirty-fifth sections into one. I have drawn a proposition to that effect; and if it is the pleasure of the Convention that the thirty-fifth section should be passed by for the present and let this proposition be laid on the table and printed, and acted upon as the members can see it in proper form, I move to pass by.

MR. VAN WINKLE. Let it be read.

MR. BROWN of Kanawha. Mr. President, I have no objections to passing by if I thought there was anything to be gained by it; but both those sections are wholly unnecessary and void. We having just provided that the legislature has all power not herein prohibited.

MR. VAN WINKLE. It would be but courtesy to hear the gentleman's amendment read.

MR. BROWN of Kanawha. I was desirous of hearing it.

Mr. Lamb read as follows:

"The legislature may provide by law for the registration of voters in the several counties, cities, towns or townships in which they reside; and prescribe the nature of the evidence to be required, in case of a dispute as to the right of any person to vote. They may pass such laws as shall be necessary or proper to prevent intimidation, disorder, violence, corruption, or fraud in elections, and may regulate the manner of conducting and making returns of elections—of determining contested elections, and of filling vacancies in office, in cases not provided for in this Constitution. They may provide by law, subject to the provisions of this Constitution, for the election, appointment, and removal of public officers and agents, and prescribe their qualifications, oaths, terms of office, official bonds and commissions, powers, duties and compensation. But the legislature shall exercise no appointing power except in cases where such power is conferred on them by this Constitution, and in the election of United States Senators, and they shall create no office, the term of which shall be longer than four years, and no persons shall be elected or appointed to any office, within any district, county or township, who shall not

have been an inhabitant thereof for one year preceding his election or appointment."

MR. BROWN of Kanawha. The first section we have adopted of this report provides that the legislative power of the State shall be vested in the senate and house of delegates. Now, in that section we have given to that legislature all the legislative power that is inherent in any legislative body absolutely. It can do anything that any legislative body can do, unless after that we go on and restrict and prohibit it from doing the things granted in the first section. Now what object can be attained after having given them the power to make all laws that are not in conflict with the other provisions of the Constitution, to go on and enumerate specifically that it may make a law for this or that, everything of which is within the general provision? Why, it would be just as wise to say that the legislature, after having given it all legislative power, might then make a law. It shall have all power to make laws, and then specify that it may make one law. Now, we stand here in this, totally different from the Congress of the United States and the Government of the United States, which has no powers given to it save and except what are delegated in the Constitution. In this body, the legislature represents all the legislative power in the people not delegated by the Constitution of the United States to the Government of the United States. Unless the Constitution of the State prohibits—makes a further prohibition. Well, in this first section we have given all power to the legislature. Now why is it necessary in sections 11 and 35 to go on and enumerate the very same powers that are included in the general plan? If we enter on that plan, if you undertake to enumerate the particular powers, why it would be wise to go on and enumerate all of them individually; and since no man can ever accomplish that, because time and experience alone can enable any one to do it, you might restrict your legislature unnecessarily in the exercise of the powers properly granted in the first section. It is making the Constitution cumbrous, repeating twice that which is once granted, and if any effect can be had to it, it seems by the repetition of one thing to exclude the exercise of anything not so repeated; but that would be destroying the Constitution (legislature?) itself; because no legislature would be worth calling a legislature if it had no legislative powers more than those specifically granted to it. I therefore prefer to have these two sections stricken out, that the constitution may be restraints on the action of the legislature, not

redelegating that which has been once generally granted. I will amend the motion by moving to strike out both.

MR. LAMB. I would suggest to the gentleman to let the subject be passed by.

MR. BROWN of Kanawha. Very well; I yield to the request of the gentleman.

MR. LAMB. One of the two sections to which the gentleman refers was drafted on the idea that the legislative power in regard to elections and in regard to officers; are not necessarily to be restricted by the specific provisions on those subjects that are already contained in the Constitution. The Constitution having made certain provisions in regard to elections, the inference would be necessary that the legislature had no power to go beyond those specific provisions unless you gave it to them expressly. It having made certain provisions in regard to officers—and necessarily doing so—the inference might arise, at least it would present a fair subject of doubt, whether the inference did not arise that the legislature had no authority beyond those specific provisions. Whether that may be a fair construction or not these provisions were rather inserted for the purpose of obviating any doubt that might be created by such a construction than for any other purpose. The Constitution is necessarily full of provisions in regard to elections, who may vote. The mere act of authorizing the legislature to make a registry of voters may be considered a restriction upon the right of voting and therefore out of the power of the legislature unless it is expressly granted in the Constitution; for if the Constitution confers the right of voting in a certain way, the legislature have no right to say voters must be registered unless you confer that power expressly. However, the whole subject will be up when the substitute is pending.

MR. BROWN of Kanawha. Mr. President, I cannot concur with the construction the gentleman gives, that you enter upon the construction of the Constitution in the light as he has given us. It seems to me that in construing a constitution, whenever a power is granted the legislature will certainly have all power not prohibited by the constitution. To carry into effect that power that is delegated—the constitution cannot carry itself into execution, every constitution has to have the aid of the laws made by the legislature to carry its provisions into effect—whatever provision is made in the constitution relative to voters, the legislature must have full

and ample power in its discretion, and in times whenever they happen to be most convenient and proper, to carry that power into execution; otherwise your constitution is useless. Now, whatever is specifically granted in the constitution relative to voters cannot be altered, but the legislature must have power to carry it into effect. If you say that voters shall be registered, then the legislature must provide for registering. And so of every other provision. The question arises is not this simply a repetition by particulars of a general power that has been already granted.

MR. VAN WINKLE. The gentleman from Ohio has offered a pretty long amendment which he desires to have printed and submitted to the consideration of the body, and for that purpose he proposes to pass by, temporarily, of course, the article under consideration. I think, sir, that is a courtesy that is due perhaps to any member of the body, and I am therefore in favor of passing by for the present. When this is printed and comes up we shall have the subject before us, and the debate that takes place now will be only repeated then.

The motion to pass by was agreed to.

The question recurred on the thirty-sixth section, which was reported as follows:

"36. No extra compensation shall be granted or allowed by the legislature to any public officer, agent or contractor, after the services shall have been rendered, or the contract entered into. Nor shall the salary or compensation of any public officer be increased or diminished during his term of office, unless the office be abolished."

MR. LAMB. I have found a similar provision in the constitution of many of the states. The Constitution of Maryland was substantially the same: "No extra compensation shall be granted or allowed by the general assembly to any public officer, agent, servant or contractor after the service shall have been rendered or a contract entered into; nor shall the salary or compensation of any public officer be increased or diminished during his term of office." The same provision is in the Constitutions of Ohio, Illinois, Iowa, etc., etc., and with the same terms.

The object of the provision I suppose is sufficiently apparent. This thing of granting extra compensation to contractors and public officers we know is continually subjecting the legislatures to improper influences and to improper solicitations. It is much

better when a contract is entered or a man enters the service of the state, it strikes me, that he should know at once that the compensation for which he has agreed to render the service cannot be varied. The legislature will be suffered, then, to attend to their legislative duties without being solicited from day to day for this officer or that officer. Parties will be prevented from entering into contracts—which has been too frequently the case—at a rate unreasonably low, on the supposition that the presumed hardship of the case would enable them to get the legislature to increase the compensation. Public officers when they enter into office will enter upon the office knowing that they are just to receive the salary which has been previously fixed for that office and that it cannot be either diminished or increased. The influence of public officers about the legislature to solicit increase of salary will be prevented. It strikes me that with the examples we have before us, the fact that the provision exists in the constitutions of many other states, and that we have never heard of any complaint there of injury from the operation of it, and the many witnesses which induce us to suppose that it would operate beneficially, should justify this Convention in adopting that clause.

MR. BROWN of Preston. I move to strike out the words: "unless the office be abolished," for the reason that I can see no applicability at all. If an office is abolished, as a matter of course the salary or compensation is also abolished. It is not a diminution of the salary or compensation when you abolish the office but it is a doing away with it entirely. I can see no effect or force at all in the words "unless the office be abolished."

MR. HERVEY. Mr. President, as the clause now stands, if the office is abolished the salary may be increased or diminished. I presume that is not the purpose of the committee. Still I would be in favor of an amendment to the amendment and will make it. It is to add after the word "abolished" the words "or when it shall cease," making the salary cease when the office is abolished. I make that as an amendment to the amendment.

THE PRESIDENT. Does the gentleman from Preston accept it?

MR. BROWN of Preston. No, sir; I am unable to see the force of it.

MR. BROWN of Kanawha. Mr. President, I shall favor the adoption of the amendment to the amendment; and I will cite an

instance in which this very question came up. While I do not really believe it is absolutely necessary it certainly is highly proper to settle a controverted question. Some years ago, when the State of Kentucky altered her constitution and made a new one and put the government under the new constitution, it found all the old judges in office whose terms of office had not expired when the new constitution took effect. An old gentleman contended that there was no power in the state to turn them out of office and it was a question whether there was any court of appeals in the state. The government under the constitution paid no regard to these official dignitaries. It became a very serious controversy, but the people asserted their sovereignty and maintained the new against the old. In just such a case—for these old officers took the ground that they went into office on a contract that they assume the responsibilities of an official station for a particular length of time upon a particular consideration; and as there was no reservation in the constitution expressly to take away that office, that they could not be divested; that they had vested rights secured in the office so long as they discharged their duties; and as they had never been discharged they claimed it was not competent to disfranchise them. Now, this amendment completely answers that objection. That is the only benefit I see to be derived from it; for officers —if they should find it necessary to remodel the constitution— could not say they had taken and held the offices under it for a time that might exceed the date when the people might choose to revoke the whole. It would be a reservation in the constitution of the right to turn them out whenever they please and stop the pay when they turn them out.

MR. LAMB. I do not understand exactly what the question is.

Mr. Hervey presented his amendment to the amendment; and it was reported by the Secretary as follows:

To add after the words which Mr. Brown of Preston proposes to strike out, the words "when it shall cease."

MR. LAMB. It strikes me that can hardly be offered as an amendment to the amendment. I do not see how that can be considered as amending the motion of the gentleman from Preston. The motion of the gentleman from Preston is to strike out the words "unless the office be abolished." This is to add after the word "abolished," "when it shall cease." It is just intended to reverse the effect of the amendment offered by the gentleman from

Preston: not merely to retain the words which he proposes to strike out but to give them a more explicit expression. They are two separate motions, it strikes me and ought to be put separately; and probably the amendment offered by the gentleman from Brooke will take precedence over the other.

MR. BROWN of Kanawha. I would suggest to the gentleman from Brooke to substitute the word "salary" or "compensation" for "it." "It" might refer to the office which was abolished.

Mr. Hervey rose.

THE PRESIDENT. The Chair would have some doubts about the question raised by the gentleman from Ohio and yet would incline to the opinion that the motion to amend the amendment would be in order.

MR. VAN WINKLE. The gentleman from Preston moves to strike out certain words. The gentleman from Brooke moves to add certain words to those it is proposed to strike out. When a clause is proposed to be stricken out, the friends are allowed to perfect it. An amendment to an amendment is always in order.

THE PRESIDENT. The Chair expressed the opinion that the amendment to the amendment would be in order and said the gentleman from Ohio might have raised some doubt in the mind on the subject but inclined to the opinion that it was in order.

MR. SOPER. I would suggest to both the gentlemen the propriety of altering the clause so that it would read in this way: "Nor shall the salary or compensation of any public officer be increased during his term of office or abolished or diminished unless the office be abolished."

MR. VAN WINKLE. That will do.

MR. HERVEY. That is not precisely meeting the case.

MR. LAMB. Mr. President, it strikes me the suggestion of the member from Tyler will meet the case exactly and put the section in such shape as to meet the object of the gentleman from Brooke and at the same time be a decided improvement in the expression of it.

MR. VAN WINKLE. If the gentleman from Preston will accept the suggestion of the gentleman from Tyler, we shall be able to go ahead. It seems to me to meet the views of all parties.

MR. SOPER. It will read: "Nor shall the salary or compensation of any public officer be increased during his term of office or diminished unless the office be abolished."

MR. BROWN of Preston. I have no objections.

MR. HERVEY. I think that is precisely the proposition that was before the house. I cannot see any difference between the proposition of the gentleman from Tyler and the original one. I therefore cannot accept the amendment, with my understanding of it.

MR. SOPER. I may explain: The salary of the officer shall not be increased during his term of office. We all understand that distinctly. Nor diminished unless the office be abolished.

MR. HERVEY. Precisely the way it reads in the original.

MR. SOPER. No, sir; whenever the office is abolished, then the salary is at an end.

MR. VAN WINKLE. Well, the member from Brooke refuses to accept the amendment, and the member from Preston cannot accept it. The question then comes on the amendment of the gentleman from Brooke.

The question was taken and Mr. Hervey's motion to add the words "when it shall cease" was rejected.

The question recurred on the motion of Mr. Brown of Preston to strike out the words "unless the office be abolished."

MR. SOPER. Do I understand you were willing to accept of my amendment?

MR. BROWN of Preston. I have no objections to the suggestion of the gentleman from Tyler.

The Secretary reported Mr. Soper's proposition: "Nor shall the salary or compensation of any public office be increased during his term of office nor diminished unless the office be abolished."

MR. STUART of Doddridge. I do not exactly understand the phraseology as it stands now. When the office is abolished, it would stand then that the salary may be diminished, but I want the salary to cease; and I think if we strike the whole out here, it will cease. Now, it may be diminished in many ways. I am sorry the gentleman from Preston has accepted the modification of the

gentleman from Tyler; because I think if we would strike out the words "unless the office be abolished," the matter would be left in its present form—that when the office is abolished the salary has ceased.

MR. SOPER. Well, sir, that I understand to be the effect of the amendment I propose.

MR. STUART of Doddridge. I am afraid that will not look that way quite.

MR. SOPER. Then we can alter it to make it read as you suggest.

MR. POMEROY. I am decidedly of opinion that the motion of the gentleman from Preston is best; just to strike out those words.

MR. HERVEY. There is no such proposition.

MR. POMEROY. Gentlemen say sometimes it does not cease. I think we ought to make it distinctly understood hereafter that it would cease; and I think to strike out those words is all that is necessary. We will when he goes out of office not only diminish the salary but cut it all off. I should think that was sufficient.

MR. SOPER. Well, sir, I will accept that.

MR. LAMB. Mr. President, the question, I suppose that we are really discussing is whether if the salary ceases entirely it is "diminishing" the salary.

MR. STUART of Doddridge. No, sir.

MR. LAMB. The clause, certainly, as it stands in the printed report does imply that the abolishing of the office and the ceasing of the salary is a diminution. But it is a queer expression. I would merely suggest whether the section could not be improved if made to read this way: Let the first sentence end at the word "office"—"nor shall the salary or compensation of any public officer be increased or diminished during his term of office." Then have a new sentence: "If the office be abolished the salary shall cease." The object of putting it into that shape would be to confer clearly upon the legislature the power to abolish offices and by that means to stop the salary entirely notwithstanding the terms of office were unexpired.

MR. SOPER. I believe, sir, that I will alter the motion: "nor shall the salary or compensation of any public officer be increased

during his term of office." That would imply that the legislature would have the right to diminish it. Well, now, if an officer should be so entirely incompetent, or if he should be guilty of any base or immoral act, I believe it would be safe to leave it with the legislature to take away his compensation. This will probably be the easiest and best way to get rid of this.

MR. VAN WINKLE. The salary would be taken away by his being taken out of office, most certainly.

MR. SOPER. I propose to amend the latter clause of that section in that way, sir—strike out all the residue.

THE PRESIDENT. The question was on the motion of the gentleman from Preston. The gentleman from Tyler moved to amend and the gentleman accepted it. Now the gentleman from Tyler offers to amend it again in this way: striking out the words "unless the office be abolished." The question is on the adoption of the amendment to the amendment.

MR. VAN WINKLE. I should object, and then the gentleman from Preston would not have the power. The provision that the compensation shall not be diminished during the term of office is just as important a one, in my opinion, as that it should not be increased. The Constitution provides for the election of certain officers and prescribes their term of office. The legislature might want to get rid of an incumbent; and as they fix the salaries they may go and reduce that compensation to nothing and oust a man. Therefore in the words "increased or diminished," one is equally important with the other. I come back to the original motion of the gentleman from Preston, striking out "unless the office be abolished," as unnecessary. The gentleman from Kanawha alluded to the question in Kentucky about old courts and new courts; and I think (the gentleman will correct me if I am mistaken) we have later received a pretty elaborate investigation legally and otherwise, and it was decided that an office could be abolished during the term for which an incumbent was elected. I do not remember where the decisions were rendered, but it has been held ever since as an opinion. They proposed in Congress, to get rid of some of the judges of the Supreme Court, to abolish the court. Since this present Congress met they have proposed to get rid of some of the district judges in the rebel districts by changing or altering the districts; and there seems to be no doubt about their power to abolish the court. The Constitution of the United

States provides for a Supreme Court, the principal functions of which are to be defined by the Congress; but the Congress is allowed to establish courts inferior to the Supreme Court. So the district courts were established by them. They changed the district, and so abolished the court and got rid of the judges. I believe that has been determined and is now in American jurisprudence and American politics an already settled point, that an office can be abolished notwithstanding there is a salaried incumbent, and that his salary ceases when the office is abolished. The section, then, as reported by the committee, by striking out the words proposed by the gentleman from Preston, will be entirely sufficient to meet the case: "nor shall the salary or compensation of any public officer be increased or diminished during his term of office." That is when a man is once elected there you cannot either reward him, make him a partison, by increasing his salary nor drive him from office by diminishing it. The legislature certainly should have no such power. Well, then, unless the office be abolished, that is intended to apply; but I agree with the gentleman from Ohio that is rather awkward even for what it is intended for. It is intended rather to exclude a conclusion, and that is all: the conclusion that in the case of the abolition of an office the salary goes on. That I think is not necessary, for no such conclusion could be justly arrived at, and therefore the words are superfluous. I am, therefore, sir, in favor of the original motion of the gentleman from Preston, to strike out those words. I think then the whole case, according to these gentlemen who have expressed themselves will be reached. A guaranty will be given to the officer that if he has entered on the duties of the office, his salary is not to be diminished during his term; and on the other hand the public have a guaranty that the legislature are not to be allowed to subsidize the public officers by increasing their compensation.

MR. BROWN of Kanawha. Mr. President, since the Convention have refused to add the amendment proposed by the gentleman from Brooke, which explained this sentence and rendered it perfectly plain, I am content to take the proposition of the gentleman from Preston as it is by just striking out the words "unless the office be abolished." It simplifies the sentence; and the country have so far acquiesced in the question that in all human probability it never will be raised again. We have had the same principle in Virginia. When the constitution of 1850-51 went into

operation, it found all the officers of the State in office. The whole State acquiesced in it, although it cut their offices right off and in the courts turned the judges right out.

MR. VAN WINKLE. Was it not the decision there that an office in this country is not a franchise? In Europe they are hereditary; and the ground taken by the old judges was that an office was something in the nature of a franchise here; and the decision was that it was not; and that when the office was abolished everything connected with it ceased.

MR. BROWN of Kanawha. I am not able to state precisely the ground on which the question was determined; but that is substantially the position laid down in the Bill of Rights of Virginia, that these offices and franchises are held for the good of the public service and not for the good of the officer and therefore maintained against the power of the people to dispose of the office; and that the people in disposing of the government of which the officer becomes a part absolutely dispose of the office too. So that this whole sentence would be retained perfectly complete by simply striking out the words: "unless the office be abolished," and is then better I think than it can be made.

MR. SOPER. I am satisfied with the remarks of the gentlemen from Wood and Kanawha, and I hope the gentleman from Preston will renew his motion to strike out, and I withdraw my amendment, sir.

MR. LAMB. I am very well satisfied that the proper amendment to the original is the motion of the gentleman from Preston; and particularly satisfied that the word "diminished" is not to be stricken out of this section. I do not think his proposition affects the most important part of the section.

MR. SOPER. It may be, sir; I can see where various reasons would require that word to be retained.

MR. LAMB. Allow the legislature to diminish the salary of an officer during his term of office and a party legislature has all the officers of the State under its thumb and they cannot move for fear their salary will be diminished to nothing and one of the very important objects of the provision would fail.

On request of the President, Mr. Stevenson of Wood took the chair, who stated the question to be on the thirty-sixth section as amended.

MR. SOPER. Mr. President, I want to call the attention of the Convention to the effect of this section. Now, may there not be contracts entered into through ignorance that might prove ruinous to a contractor; and if we pass this provision in the Constitution he would be entirely left without remedy. Let me call your attention to a case that may arise within this State. Suppose in the erection of a canal or railroad, you go over, you look at the surface, you make an examination and you put in your propositions. Well, by-and-by when you come to get through your mountain or some other portion of the ground you discover a hard substance, "hard-pan," a familiar name, or you find some other obstructions in the way that it was almost impossible to discover. Now, sir, where a party has entered into a contract and expended large amounts of money and met with this unfortunate difficulty—difficulties in the way which will prove ruinous for him and render it impossible for him to complete it, ought he not to have some remedy, and would not that remedy be with the legislature in the exercise of its equity powers? In order to do what would be just to the party who had thus been, either ignorantly or in any other way misled into the creation of the contract? If we adopt this section as it now reads, that portion of it which takes away from the legislature the power of granting any equitable relief in any case that might arise might prove ruinous to every person connected with it, and might also prove injurious to the State in consequence of the delay that necessarily would ensue. I throw out this suggestion for the consideration of gentlemen to see whether we had better not strike out the forepart of that section and leave this whole matter to the discriminaion and judgment of our legislature.

MR. BROWN of Kanawha. Mr. President, I fear the gentleman from Tyler is too much concerned now for the security of these gentlemen, contractors, who I have no doubt will always take care of their own cases.

THE PRESIDING OFFICER. The Chair would like to suggest to gentlemen unless their remarks are on the question of striking out the whole section, it might be well enough to make an amendment to the particular part under discussion.

MR. SOPER. Well, for the purpose of bringing up the question, I will move to strike out the words in the first, second and third lines—the first clause of the section.

MR. RUFFNER. I would merely make a suggestion, sir—I have been very well aware that the difficulty suggested by the gentleman from Tyler may arise to the disadvantage of the State as well as the contractor. May not his object be attained by striking out the latter words of the clause: "or the contract entered into?" So that it may read "after the service shall have been rendered." So that a contract may be modified before the services are rendered to suit the particular case?

MR. BROWN of Kanawha. I shall look, in the vote I shall give on this section, to the question of general principle—the great principle of security to the public, and not particular cases. I am satisfied that this is an essential security to the public treasury; that the great tendency is in all these contracts, to award them to the lowest bidder, whoever it may be, and the inducement held out is for the parties to obtain the contract by an excessive bid, high or low; and when it has been obtained at ruinous rates to go on and never cease to solicit the legislature until they have been paid twice or thrice the price it could have been obtained at; and that the loss that will continually accrue in such cases will a thousand-fold compensate the occasional individual loss. Because there will be such. But that upon a general principle the great gain is to the public. The private individuals will always be pretty shrewd and take care of themselves. When a man bids for a contract, knowing it will not be altered, he will not put it below living rates. We have seen that in granting increases in all kinds of contracts and in a small degree in our state concerns; and that is the real evil to be avoided. Whenever you have fixed and determined that the party shall not have any more than he has bargained for—and why should not this contractor, like everybody else, be required to live up to his bargain?—then he knows that it will not be altered, and knowing that fact he will take care of himself in managing his own business.

MR. VAN WINKLE. I have had some little experience about contracts and I do not attach much force to the case given by the gentleman from Tyler. I know the fact that these contractors for public works always make allowances for disappointments of that kind. I know, on the other hand, that much abuse grows out of the contract system. Many of these army contracts, now so much complained of, have been done in that way. If a thing is put up to be let to the lowest bidder, the man makes a low bid to shut out all competition. Then he expects to go to Congress and get an

extra allowance. That is a sheer injustice to other bidders. He had the same means that they had of calculating, but knowingly and wilfully puts in a bid to insure the contract far below and then hopes to come back and show that he has really lost money and so prevail upon the sympathies of Congress to make it up.

I have had some experience in the different capacities of a railroad man and connected with the government of my own town. We were in the habit in the first place, when I had anything to do with it—"kissing" went "by favor"—they generally gave out the contracts among themselves; but we got in a "reform" board and established the principle of letting to the lowest bidder, and got contracts taken at a remarkably low figure. And sure enough, before the season was over they came back with long faces and asked the council to make it up. I then endeavored to establish a rule that in making it up they should provide what the work had actually cost them; that they should at least lose the profits on it as a punishment for this low bidding. Then we had to make it that the contracts should be let to the lowest and best bidder and make them give security; and finally that no allowance would be made. Of course, we could not govern our successors; but as long as this was known there was none asked for or thought of afterwards. The protection that this gives to the people is a very great one. The thing has been constantly done in the legislatures of the whole country: men entering into engagements they knew they could not fulfill and depriving other and better men, who could really have done it cheaper, of the advantage of their bids by bidding below them and then coming back to have it made up. It is certainly a great injustice to the honest traders in that line. The case the gentleman from Tyler has enumerated is exceptional. One or two cases, at the outside, would be the extent of it. There is nothing here to prevent the legislature rescinding a contract if it is found the contractor cannot carry it out on account of the interposition of some such difficulty as the gentleman has indicated, paying him for what work has been done, instead of giving him an extra allowance. The thing is then put up at public outcry again or the work offered again to the public with the knowledge that has now been obtained that there are greater difficulties in the work than was first anticipated. It is then relet; and then the rule applies again that that man is to have no extra pay. The only difficulty is one that is readily obviated: rescinding the contract and offering it again to the public.

I think, sir, that justice to honest contractors demands that this clause be retained. Justice to the people most unquestionably demands it. For the most outrageous swindles in the purchase of public supplies are being discovered by investigating committees in almost every quarter, by means of underbidding. The dishonest bid is taken, and then it is made up to the contractor afterwards. We ought certainly to stop that kind of game.

MR. SOPER. I never have been a contractor of any description that required a compensation from the public, and never expect to be, sir. My object in making the motion was to call the attention of the Convention to the effect of the section that he proposed to strike out if we leave it to remain here; and I instanced where hardships might arise unavoidably and unexpectedly and without the party being able to discover it before he entered into the contract in which justice and equity would require the individual should be compensated. Now, when we insist upon this clause, in order to guard against contractors, etc., we carry indirectly an imputation upon the individuals who are empowered by the State to enter into these contracts, and we carry the like imputation as to the honesty or competence of the legislature. Now, ought we to do an act of that kind which would be an imputation—cast reflections of this description? Would it not be better to leave this whole matter to be determined upon by each particular case, believing the State officers and the legislature who would have control of this matter would be equally as competent and honest as we ourselves? Let us take another case. Suppose we were about to erect here a state house and it would be let out on contract, and it would be reduced to writing; that it would be thought on the part of the State that you should take and put down every particular—

(The President at this point resumed the chair.)

that would be required in the building. Suppose the man having control of it will find an alteration beneficial, or that "extras" would be done—what under the contract you might consider as extras if you please. Well now you could bring no action against the State after the work is rendered. It might be even at the expense of the person who had control of the building that these alterations take place. The party doing the work would have no remedy legally against the State. He could not prosecute the State. If it was between individuals he could maintain an action

on everything that was not embraced in the contract itself, if it had been performed; but as against the State, he would not have that remedy. Ought there be a clause in the Constitution that would prevent the legislature from acting in that case and compensate the individual for what he was honestly entitled to. It is, sir, with a view of calling the attention of the Convention to this state of things that I have been induced to make this amendment. Now, I am fully aware—I know the ingenuity and the contrivances of men who depend on the public by making in order to speculate and who resort to the commission of great frauds. We hear of it constantly, and it is impossible, unavoidable. But yet after all, it comes back to this: we must see that we put honest and competent men into office to guard against these occurrences in spite of all the ingenuity and understanding they can bring to bear on the particular object. Yet if it should turn out that unavoidably, if you please, the parties should sustain a permanent injury, ought there not to be a power somewhere by whom justice could be done to him and he should receive an equitable compensation for this extra loss? And then it comes back, as I before remarked, sir, whether or no a legislature would not be a safe repository and take care of the people in these respects.

MR. BROWN of Preston. Mr. President, I am opposed to any change in the clause before the Convention. I believe, sir, if that change is made there will be "hard-pan" in every contract, and I further believe, sir, that there will be "extra" bills enough to take advantage of this thing. I am utterly opposed to any change in the language of the clause under consideration.

MR. LAMB. We are obliged necessarily in making provisions in the Constitution to adopt general regulations. We cannot adopt any general regulation either in a constitution or any law but what the ingenuity of men can point out some hard case that will arise under it. It is a necessary consequence of all general regulations. There will be some cases in which they will operate with some hardships. It is sufficient for us, therefore, to shape our regulations so that they will be in the general results, in the multitude of cases beneficial to the public. If we have accomplished this end we must overlook the particular hardships which in some individual case will arise under every law that can be enacted. Let us see, however, what is the precise effect of this clause. Suppose a man has entered into a contract with the State under a mistake of fact. Suppose that is apparent: what is the proper course then

to be taken? This clause does not prevent the legislature from assenting, if he represents the matter at once to the rescission of that contract. When he has shown to the legislature that the contract was entered upon under mistake of fact, he can apply to them to rescind the contract. Then it would be put up again and all would have a fair right to bid for it again, with the knowledge thus obtained and he would have the right to go on with that contract, having found he had entered into it by mistake and then come forward before the legislature to show that "this appropriation must be made or injustice will be done me." Then again, if you put it into your laws that the legislature cannot grant extra compensation, you do insure that there will be the utmost care in making these contracts. These hardships will very seldom arise, because men knowing that the compensation is a fixed thing and that the legislature itself cannot alter it, that even if they find they made the contract under mistake their only resource is a rescission of it out-and-out and let the public bid fairly for it—they will be very careful to know what they are doing before they enter into these contracts. One great public benefit will be secured by assuring that such care has been taken and that contracts are not bid for except by competent men who honestly intend to perform the work for the price they offer for. I can see that a little ingenuity will enable a man to imagine difficulties under any law. This provision it strikes me will not present any greater difficulties or any more or any greater hardships than most general laws do in some case or other.

The question was taken and the motion to strike out was lost, and the section was then adopted.

The next section was reported:

"37. Any officer of the State may be impeached for maladministration, corruption, neglect of duty or any high crime or misdemeanor.

The house of delegates shall have sole power of impeachment. The senate shall have the sole power to try impeachments. When sitting for that purpose, the senators shall be on oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in case of impeachment shall not extend further than to removal from office, and disqualification to hold any office of honor, trust or profit under the State; but the party convicted

shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law.

The senate may sit during the recess of the legislature for the trial of impeachments."

MR. SINSEL. Mr. President, I propose in this section to strike out the word "impeached" in line 232 and all after "misdemeanor" in the 234th line and insert in place of impeached "removed from office by indictment and conviction thereof." It would read then thus:

"Any officer of the State may be removed from office by indictment and conviction thereof for mal-administration, corruption, neglect of duty or any high crime or misdemeanor."

Now it does seem to me that in a country like this we should have no privileged classes. The lowest peasant is liable to indictment, conviction and the severest punishment for any crime. Now, if they are liable, why should not persons be in high places. Retain this section as it is: if any officer of the State is guilty of any of the crimes enumerated here, how will the common people get at him? An officer might injure me very much; he might by his corruption or mal-administration wrong me to the amount of a thousand dollars, and I might be able to prove it. Yet I might be worth nothing. How am I to "impeach" that man? It is just saying: go ahead and do as you please. If he should happen to act corruptly with persons in high position, he might be in danger. But the way it stands here, the common people will have no guaranty whatever. Now, if any of these officers should be guilty of any of the crimes enumerated here why not indict him in our circuit courts. Then he would have a regular trial and if convicted by twelve disinterested men, why remove him from office. Then he is come-at-able. But to retain it as it is, it is virtually telling him to go ahead, they can do nothing with him.

The hour having arrived, the Convention took a recess.

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AFTERNOON SESSION

MR. BROWN of Kanawha. Is a motion in order?

THE PRESIDENT. When the Convention adjourned it had under consideration the thirty-seventh section. By leave of the house the gentleman can offer it.

MR. BROWN of Kanawha. I hold a letter of credentials in behalf of Benjamin H. Smith as a delegate in this Convention from the county of Logan signed by a number of individuals and accompanied by a letter from Colonel Gilbert who says the enclosed was handed to him by the signers. I move, sir, that Colonel Smith without a reference to the committee be admitted to a seat in this Convention.

The Clerk reported the papers as follows:

WHEREAS, No election was held in the county of Logan for a new State and delegates to the Convention, as prescribed by the ordinance for that purpose, nor could any such election be held on the 24th of October last on account of the hostilities of the country.

The undersigned, being citizens and voters of said county, desire to express our wishes for the new State and do hereby appoint Benjamin H. Smith, Esq., (with whom we are well acquainted as a man of character and legal ability and whom we know to be acquainted with the interests of the people of Logan) and request that he shall act as our delegate to said Constitutional Convention for said county, and that he may be admitted to take his seat as such as fully as if duly elected.

Given under our hands, this day of November, 1861.

BENJAMIN W. WHITE
JAMES M. WHITE
BALLARD WHITE
GEORGE CLAYPOLE
WILLIAM CLAYPOLE
CALVIN BURGUESS
LIN BURGUESS
JEPSON BROWNING
JAMES D. PARRY
BALLARD PARRY
JASPER PARRY
C. BALLARD
R. D. BALLARD
C. BURGUESS
A. BROWNING

Headquarters 44th Regiment O. V. M.
Camp Piatt, 13th December, 1861.

Benjamin H. Smith,
Charleston,
Dear Sir:

The enclosed document was handed me by the signers thereof to be forwarded to you. My experience here leads me to believe

that Governor Peirpoint should organize the militia of this part of the State for the purpose of home protection. The organization of regiments for the United States service draws away from their homes the young fighting men who ought to be organized at home. The 8th Virginia regiment is largely recruited from Boone, Logan and Wyoming; and the result of the withdrawal of so many Union men from that section is to render the opposite party predominant; and they have stripped the families of the Union men who have left and are threatening others. One difficulty I labor under, and which every commander, no doubt, feels is that of discriminating between the active rebels and the sympathizers. I have thought that if the militia were organized we could call upon their officers for guides and scouts; or on making a movement have them called out as auxiliaries. I uniformly refuse to arrest any one unless the proof is in hand. Big charges won't do! If the 8th Virginia regiment had been stationed here, I could have found in its ranks men from every neighborhood. I could know who to trust and who to arrest.

With much respect, yours,

SAMUEL A. GILBERT, Colonel.

MR. BROWN of Kanawha. I asked the reading of Colonel Gilbert's letter that it might be seen how it comes to Colonel Smith. Colonel Smith resides in Kanawha county and I know has practiced law in Logan, has been an old practitioner there long before I was at the bar. I presume no man is better acquainted with the people of Logan, a large number of whom are his clients, than himself. I imagine it would be very difficult to get any responsible man to come here from that county to represent them owing to the fact that such a person would have to sacrifice everything he had and invite aggression by small marauding parties. Those are the difficulties the people of Logan labor under and the reason I imagine that drives them to the necessity of selecting a gentleman to represent them who lives out of the county. I hope therefore it will be the pleasure of the Convention to extend to the people of Logan the privilege of being represented in this body.

The motion was agreed to and Mr. Smith admitted to a seat.

MR. LAMB. When the Convention took a recess this morning it had under consideration the thirty-seventh section of the report, or rather the amendment which was offered to that section by the gentleman from Taylor. I think that amendment is founded, in some measure, on a misapprehension in regard to the plan which was contemplated by the committee. It certainly never was con-

templated that the removal by impeachment should be the only manner in which officers should be removed. It is one only of the different modes in which officers are to be removed. If you look through the reports which have been presented to the Convention, you will find in the report of the Committee of the Judiciary a mode of removal suggested there. I believe in the report of the Committee of the Executive Department there is also something upon this subject. And in addition to all this, the thirty-sixth section of the report of the Committee of the Legislative Department, which was passed over this morning, provides that in cases not otherwise provided for in the Constitution the legislature shall prescribe by law the manner in which the officers of the State shall be removed. The question is, then, simply whether the impeachment should be preserved as one of the modes, not as the exclusive mode of removal. The manner of removal which is suggested in the amendment of the gentleman will be very appropriate, it strikes me, in certain cases; it might not answer in all. At any rate, there is nothing inconsistent at all with adoption of a provision of that kind as a distinct and separate provision at the same time we adopt the thirty-seventh section.

I have a little to say in favor of the mode of removal by impeachment. It has been adopted in the Constitution of the United States; it is adopted almost universally in the constitutions of the states; and with the experience and knowledge I have in reference to that matter I could not undertake to say that a provision so universally adopted in other states was unnecessary and improper as one of the modes by which delinquents in office should be got rid of. Adopt it as the exclusive mode to the exclusion of all others, and I should be like the gentleman from Taylor utterly opposed to it. But some provision of that kind must be adopted and incorporated somewhere in our Constitution; and a provision which will leave it to the legislature to provide for the appointment and removal of officers in cases that are not otherwise exclusively regulated by the Constitution is an essential and necessary provision. The thirty-fifth section contained that provision. The substitute which I offered this morning for the thirty-fifth and the eleventh sections contains a provision of the same kind. If I were compelled to choose, therefore, between the modes of removal by impeachment and the amendment which was offered by the gentleman from Taylor, I should take the amendment of the gentleman from Taylor. But I do not see that one is, or ought to be considered a substitute for the other.

MR. BROWN of Kanawha. Mr. President, I think there can be no doubt about the fact that this provision in this thirty-seventh section is intended as an additional security against maladministration and bad conduct of officers; but this does not at all prevent the indictment and prosecution of every officer. No individual is screened from prosecution because he is an officer or liable to impeachment for a less offence. But the very object of this section is to secure to the country the means of getting at men whom you find much difficulty in prosecuting and establishing crime against. It places it in the discretion of this body with larger discretion a great deal than a court would be confined to in its adjudication in the fact whether the offence was really committed or not; and all the gentleman proposes in his amendment is fully attained by the provisions of the law and the Constitution and this is but a cumulative and additional one.

MR. SINSEL. You will perceive, Mr. President, from the wording of this section that it has reference to state officers, I presume exclusively; so this will not apply, as I understand to governors (?), any county officers or anything of that character, but simply to the state officers; for instance the governor, the lieutenant governor (if we should have one), the secretary of the commonwealth, the auditor, treasurer and so on embracing all the state officers. I would prefer having this thing settled all under the head of the "judiciary" for I think it properly belongs to the courts; but as it is here and only has reference to the state officers, what other mode will there be suggested or has been suggested to get at these state officers in any of the other reports? None. The judiciary refers to judges there, and so on county organization may refer to county officers, and one department to one and another to another, leaving this kind of officers only to be tried in this manner by impeachment. Well, now, if they are found guilty of either of the offences mentioned in this section by indictment and conviction, they are punished then for this crime as an individual; but what becomes of their office? They still retain this high position in society; have the whole public moneys—the treasurer might at his disposal; the governor might go on with his maladministration and be indicted as an individual but still holding his office; and who would get at him? How would you remove him by this impeachment? Who would arraign that man before the legislature if he was guilty of a crime but a humble citizen in his maladministration or corruption? Where is the humble

citizen that could arraign and successfully prosecute him before the legislature? He might have the evidence all around him to convict that man beyond a doubt and he might be convicted and still go. Well, now, if upon this conviction his office should be declared vacant—if the judge in pronouncing judgment, in addition to the penalty prescribed by law for such offences—and if this amendment is adopted here, why the striking out of the balance of the section will follow as a matter of course. That goes on and prescribes the mode in which these high functionaries shall be tried. So I think this impeachment would amount to an impracticability.

MR. LAMB. One consideration which I neglected to mention when I was up: that it may be necessary to preserve the remedy by impeachment. Incapacity is an imaginable offence. You cannot indict a man because he is incompetent. I find that in all these states in which the remedy by impeachment is preserved they provide other modes for the removal from office. I believe it is the case in this State in which the clause we are introducing is contained in the Constitution, providing that "The governor, lieutenant governor, judges and all other offending against the State by maladministration, corruption, neglect of duty or other high crime or misdemeanor, shall be impeached," etc. It is not construed in any case to prevent other modes of removing parties from office. Another constitution I have here contains the usual provisions in regard to impeachment and an additional clause: "The legislature shall provide by law for the trial, punishment and removal from office of all other officers of the State by indictment or otherwise." I should have no objection to have a clause of that kind added as an additional provision and might even consent to the proposition of the gentleman from Taylor as a substantive provision standing by itself but not to that part of his proposition which goes to strike out the remedy by impeachment. It appears to me that the proposition would stand much fairer before the Convention if offered as a distinct and additional proposition.

The question was taken on Mr. Sinsel's amendment and it was rejected.

The question recurred on the adoption of the section.

MR. STUART of Doddridge. I move to amend by inserting the words "or incompetency" after the word "corruption." If a man gets in and is incompetent to perform the duties of that office

this section provides no remedy by which he can possibly be reached.

MR. LAMB. I was going to offer the amendment myself. I think the word ought to be there or its equivalent.

MR. STUART of Doddridge. I do not care who offers it, I want to vote for it.

The amendment was agreed to.

The question recurring on the section as amended, it was adopted.

The thirty-eighth section was reported as follows:

"38. No act to incorporate any joint stock company, or to confer additional privileges on the same; and no private act of any kind, shall be passed, unless public notice of the intended application for such act be given under such regulations as shall be prescribed by law."

MR. POMEROY. I move its adoption.

MR. SOPER. Mr. President, I move to strike out the words "joint stock" so that it will read: "No act to incorporate any company or confer additional privileges on the same."

MR. LAMB. I would like to understand more distinctly the bearing of that. Are there any companies except joint stock companies?

MR. SOPER. I suppose there are, sir. I suppose there are. An individual may have a company, an incorporated company, and may have powers to protect him in carrying on banking business or other business. Now a joint stock company is a company where there are several individuals who unite portions of their property for a particular object. I believe the safer way is to have no act of incorporation of any kind passed without proper notice being given for it.

MR. BROWN of Kanawha. I cannot go for the amendment of the gentleman, which seems to be to extend this restriction on the legislature: because I believe the whole section is a restriction that ought not to exist. It seems to me that the tendency is to tie the legislature up until it will have no laws to make and we will have no use for a legislature at all. That you can get along in any country, in this country, without joint stock companies—the his-

tory of the country has demonstrated the fallacy of such an idea. They are essential as the sun or the changing seasons almost to our national existence, to our institutions—a part and parcel of our society. The unnecessary restriction of the legislature in granting an extension is certainly an evil. What would be the effect of requiring this notice of intended application? It will be to trammel the legislature and defeat the design we have. The notice will be hidden away, perhaps covered up by some of the many notices stuck up to catch the votes of the people. Who will ever find it? While the honest yeomanry who will come up here for this legislation and the extension of these privileges to meet their wants will always be turned away from the fact that they have not complied with the prerequisites. If you have no confidence at all in the integrity of the legislature, withhold from them every power. If the representatives of the people to whom they are directly responsible every year have any knowledge of the wants of their constituency, why trammel them with this notice? I am satisfied these trammels only defeat the main end, that is the legislation for the benefit of the community, and places the whole of it in the hands of those who are far-sighted enough to see at a distance what is to take place.

MR. LAMB. Mr. President, I hope it will be the pleasure of the Convention to adopt this section, for although I assent to the proposition that joint stock companies are very necessary for many purposes yet this thing of getting them up in private—this thing of getting up joint stock companies without the people in their neighborhood knowing anything about them, and getting them from the legislature privately—I am utterly opposed to it. Suppose they are necessary, what harm is it to require that some notice should be given before the application is made? Is that depriving the legislature of all power? Is it not fair and right? A set of men come before the legislature and ask them to confer on them special privileges. Is it not fair and right that the people who are to be affected by that should have some notice that such an application is to go before the legislature? The legislature will regulate when and what manner of notice shall be given. No doubt they will do that wisely and so as to impose no unnecessary burden on them. What I trust they will have the right to do and will do, but in such manner as to prevent private applications, which as we know has often been the case get through the legislature without the people in the neighborhood knowing anything about them.

Such occurrences have been too frequent in this country not to require some corrective and it strikes me it is as moderate a restriction as we can impose on the practice. It is simply that before the application is made such notice shall be given of it as the legislature in their wisdom may think necessary.

MR. PAXTON. I would like to inquire of the chairman of the committee whose report we have before us whether this section does not bring up the whole question of corporations and joint stock companies. It appears to me that it does and that this section would imply that they are to exist by special laws. I apprehend that there may be a disposition on the part of some of the members of this Convention that corporations and joint stock companies shall exist only hereafter by general laws as in other states. I presume the adoption of this would imply that they are to exist by special laws. I rise for information, to know from the chairman whether I am correct in that opinion.

MR. LAMB. I do not know, of course, what propositions may be submitted to the Convention; but until some proposition of the kind indicated by my colleague from Ohio has passed the Convention it is certainly proper to provide that if joint stock companies are to be incorporated by special laws they should only be incorporated after notice of the application has been given. If it should be the pleasure of the Convention hereafter to adopt another system in regard to joint stock companies of course it may or may not supersede this provision. It is sufficient to consider the matter at present before us.

MR. PAXTON. Then I understand the adoption of this provision would imply that joint stock companies are to be incorporated by special act? Whether after this Convention are prepared to adopt that provision—

MR. LAMB. No, sir, I do not think that question necessarily comes up at present.

MR. PAXTON. I should think the adoption of this section would imply that.

MR. HERVEY. I think the Committee on Taxation and Finance has had the subject under consideration and has made provision the kind intimated by the gentleman from Ohio should be adopted as a part of this Constitution, of course it would conflict with that section if we adopt it. I therefore move to pass by for the present.

The motion to pass by was not agreed to.

MR. BROWN of Kanawha. Mr. President, the allusion made by the gentleman from Ohio (Mr. Lamb) to the evils arising from passing private acts: now, sir, this law will accomplish another evil and I think a greater one that whenever parties find themselves by failure to give notice as proposed, they will make a private application under a general cover and you will have your whole legislation for private matters assuming a general form and general laws. I can give an instance of it that occurred yesterday where the member from one of the counties in the legislature spoke of the case of a deputy clerk who had kept the books and had certified and examined them in the place of a clerk who had gone to "Dixie," and he asks for his pay for the performance of his duties that the clerk should have received, and the auditor declines paying him because it is alleged there is no law authorizing him to pay; and the legislature has passed a law authorizing the paying of all deputy clerks who have examined the books and certified them in lieu of the clerks who should have done so. Now, there is a general law made to meet the particular case; and this point the gentleman is seeking will be foiled at every turn by the ingenuity of gentlemen; and instead of your laws having a private they will assume a general character. I think it is better to let the legislature be without any of these trammels.

MR. POMEROY. Did you make a motion to strike the whole section out?

MR. BROWN of Kanawha. No, sir; but I will vote against it, which I consider will be to do the same thing.

MR. POMEROY. There is a question pending on the motion of the gentleman from Tyler, to strike out the words "joint stock."

MR. BROWN of Kanawha. That makes it worse than now.

MR. SOPER. The object I want to get at is this: that the legislature shall not grant any act of incorporation to an individual for any purpose whatever in the State unless notice shall have been given. The kind of notice I think they ought to give would be this: if we have a paper in the State called a state paper a notice of the application ought to be published in that paper for six weeks successively and it ought to be published in every county where there is a newspaper in which the incorporated act is intended to operate. The object of this, sir, is to prevent the giving of privi-

leges at the expense of the community at large—that the people who are to be affected by it either beneficially or otherwise shall have notice of the application and that they shall understand what its probable effect will be on their interests. Now, I believe that the experience of legislation has shown in other states, if not in this, that a notice of this description is of the greatest importance: and it has been followed up I believe more recently by doing away with special applications to the legislature and getting what they call now general laws by which individuals without any application to the legislature at all can combine their capital together and use it for almost any purpose. But we have not got the subject of a general law now before us; but we have got here a very plain proposition that public notice shall be given, such notice as the legislature shall think necessary. It is intended for the protection of all parties and to prevent surprises; and I think it is a wise provision and I am in favor of it but I want it to apply to all acts of incorporation. I know an instance where the legislature refused to grant a village incorporation because certain notices had not been given. I believe that was a notice required by some rule of their body. Notice had been given at the place and at several places where the intended amendment was wanted for operation.

Now, sir, I would strike out these words in this section and I would strike out the word "private acts" too, because I cannot see any necessity of publishing a notice in a newspaper or anywhere else of an individual who wants a private act passed, but in all acts of incorporation, the wisdom of legislation has discovered that it is a necessary precaution to have this notice given. A number of weeks at least before the session of the legislature or before their presentation of a petition of the legislature for the act of incorporation.

MR. STEVENSON of Wood. I only wish to make a remark or two in reference to this subject. I may state that I am in favor of retaining the substance at least of this section. I agree with the gentleman who last spoke—the gentleman from Tyler—that it seems not altogether proper to apply this same principle to private acts that we propose here to apply to joint stock companies. However, upon that I shall not say anything until I hear what may be said in favor of the proposition as it stands. I feel this way, sir, in reference to this whole matter, that if it is possible to adopt a provision in this Constitution by which such mat-

ters may be brought under the operation of general laws, I would prefer it and I think the Convention would. But so far as measures of that kind are concerned they are not yet entirely a success and until they are, until we adopt provisions of that kind that work well and work satisfactorily in a majority of cases we must have the incorporation acts to incorporate companies with special privileges, special laws for the incorporation of companies of this character. In some states they have already general laws for company purposes. They have in Pennsylvania and in some other states what they call a general manufacturing law; and they have in some states general laws under which gas companies operate and under which they organize bodies of men to prosecute that particular business: and so the principle, I think, is working successfully into all the legislation of the different states. But I do not know that there is any state that has abandoned entirely, or even to any great extent, the principle of incorporating by special laws companies for these different purposes; and as long as it is the practice of the different states to grant these special privileges, it seems to me an absolute necessity to accompany that practice with restrictions of this kind. Now, sir, I believe they have adopted them in all the states and I am aware that they are abused, that they are not restricted to the extent which the law intends they shall be restricted. The fault is not with the law. The abuse would be worse, the injury greater, if there were no laws, it seems to me, on this subject. It is in spite of the existing law and not because it does exist, that these abuses take place; and, therefore, sir, I am opposed to striking out the section; and I feel inclined to favor the amendment of the gentleman from Tyler. I am aware, sir, in point of fact it may be said that there is no company that is not a joint stock company; but yet technically or legally speaking there may be companies that are not of that character. It seems to me that an ordinary mercantile firm or a manufacturing company—

MR. LAMB. They are joint stock companies.

MR. STEVENSON of Wood. Not in the sense in which it is used generally. The concerns are not put out in shares and sold in the market; and I do not think it would come strictly in the meaning of a joint stock company although it might be so in reality. But even if there is the least doubt on that subject it seems to me the striking out of these two words will prevent any difficulty on the subject and reach the matter exactly as the friends of this section

wish it to be reached. It will then prevent any company from getting special privileges of any character unless they have given the notice that is specified here.

These are considerations, sir, which induce me to favor the adoption of the clause either with or without the amendment.

MR. SOPER. To meet the views of some gentlemen, I will withdraw the motion to strike out the words "joint stock" and add the words "or other company," so it will read: "No act to incorporate any joint stock or other company."

MR. LAMB. I was going to remark that I attach exceedingly small importance to retaining the words "joint stock" company. I doubt after all if those words are stricken out whether the gentleman will accomplish what seems to be his only object. He speaks of an incorporation consisting of an individual. Does not the word "company" include more than one? Can you make a company out of an individual? Have you not got the same difficulty in the section that you had before? However, I have no objections at all that those words should go. I hope the words "private act" will not be stricken out when that question comes up, for there is a variety of private acts in which notice can be given; but we will leave the discussion of this part to the legislature. There have been acts applied for in this State asking that property be exempt from city taxation—church property: they will apply to exempt that from taxation. A variety of acts can be passed conferring special privileges upon particular individuals; and where that is the case the same reason exists for notice that does exist in the other case. A private act will very seldom be asked for unless it is to confer some special privilege on the individual at the expense of the community. The community ought to know that such an act is to be brought up for the consideration of the legislature.

THE PRESIDENT. The first amendment being withdrawn, the question is on the adoption of the amendment last offered by the gentleman from Tyler.

The question was taken and the amendment rejected and the question recurred on the adoption of the section.

MR. SOPER. Now, sir, if I understand the section, no act of the legislature can be passed at all without a notice previously given: no private of any description. And although there may be private acts got through that might be introduced, yet I think

this clause is too comprehensive in its meaning and I shall move to strike out "and no private act of any kind." Strike out those words.

MR. STUART of Doddridge. Mr. President, I am in favor of the motion of the gentleman from Tyler from the fact that I think this is an unnecessary restriction and one that will lead to great inconvenience in many instances in which it will be necessary to pass private bills for the relief of private parties, incurring unnecessary expense on the party who applied for it. Now for one or two practical illustrations. There have been one or two private acts applied for before our present legislature—two that I know of. One was for the relief of a gentleman in the county of Upshur who was robbed of his money the other day by the secessionists. He comes on here and makes it appear that the money was taken. It is an unnecessary expense that he shall go on and publish a notice and perhaps the legislature will adjourn and he not be able to get it, when everybody will be willing to afford that gentleman relief. Another is that under an ordinance of our late convention which authorized parties to pay in their taxes against a certain time and receive a discount of ten per cent. Our sheriff went on and collected; he had so many days to pay it into the treasury. He starts the money by express and through misfortune, the railroad breaking up in some way, not being able to make connection he is unable to get his money here at the very hour. Well, sir, it is necessary that he should have an act granting him the percentage which the auditor refused to allow not from any fault of his own but from causes over which he had no control in the world. Now, if you pass this, before a party under circumstances of this kind could obtain relief he must go on and publish a notice that he is going to make an application, making the additional expense to parties, which I suppose ought to be remunerated to them also. I think it is an unnecessary restriction. I shall vote for the amendment of the gentleman from Tyler.

MR. BROWN of Kanawha. The more I think about this subject, the more I am satisfied the only effect in the world this section can have is to annoy, harrass and trammel the legislature in the performance of its duty, which is to make laws to meet the wants of the community. Now, sir, the gentleman who has taken his seat has alluded to one case. There are several others that have come under my observation now transpiring. This legislature have passed bill for the relief of this clerk and that clerk and this of-

ficer and that officer that have been elected about the country and who from circumstances over which they had no control have failed to qualify in their offices within the time prescribed by the general law. It is a continual succession of people coming up for bills to relieve them against misfortunes which could not be foreseen. In every case under the operation of this act you have got to go back and publish a notice. When a man goes to bring a suit, he has the law before him; and if there is any intermediate expense he is compelled to bear, he can take his own judgment and get the aid of counsel whether it is worth while to risk his money because if he succeeds he will recover it back. But you give notice and who do you give it to? What boots it to give notice to the people? The legislature will have notice when it comes before them. But you put the parties to the expense of publishing notice to the world of their applications to the legislature and then when they make their application to the legislature, the legislature will just cast it aside from their mere volition. They are under no obligations, and you subject the parties to these unnecessary expenses beforehand to obtain the consent of the legislature in adopting what he asks or which they in their supremacy may choose to refuse. And where is the remedy of the party? It is an injustice to him. Now whenever you by law prescribe a man's rights and prescribe a course of action, he can ascertain whether it would be worth while; but here you are acting on the mere volition of the party. And this notice, when given is only a notice to the people and but a small portion of the people. All they could do would be to communicate the fact to their delegate that they were for this proposition or against it. He is the very man that is to receive the notice before he can vote on the question. You are putting the party to an unnecessary expense, producing the chance of defeat to a measure which ought to be carried, by a failure to give notice, and give it to a constituency when they are not the persons to decide the question. So that in every point of view it seems like public policy requires that this whole section should be stricken out.

MR. POMEROY. The question before us is just to strike out a certain part. I pretty near agree with the gentleman that it ought to be stricken out; but I think this in regard to private acts ought to be stricken out. It certainly will do no practical good but lead to annoyance and trouble; and I can see no good that can be accomplished by it. We ought to be careful to do nothing that has no practical good to result from it. And I can see why this ought

to be stricken out and I am in favor of the motion of the gentleman from Tyler to strike this part out.

MR. HERVEY. I shall vote to strike out the words and then the whole section, for the reason that when this report comes up as a whole it can be reinstated and perhaps at a future time the Convention will be better prepared to act on this question than just now.

The question was taken on the motion to strike out the words "no private act of any kind" and it was agreed to and the question recurred on the section as amended.

MR. BROWN of Kanawha. The act now as presented to the Convention is nothing more nor less than this in effect that we have required that all private acts that no notice shall be given by parties applying for private acts; but now the question as it stands requires it for public acts, and if for any, why not for all public acts? Why require parties for a joint stock company in which the public are concerned? If it were to build a railroad, turnpike, canal or any other internal improvement in which the public are concerned, the representatives of the people are there to act and decide on it. Why require you to go through the forms of giving notice beforehand all over the community when the representatives of the people are in the house with a full knowledge of the whole subject does seem to me that it is tying up the hands of the legislature and not tying them effectually but only trammeling them and annoying them, because with all this annoyance they may work it out by delay. But then the wants of the community are suffering in the meantime and all for a mere formality. If there is any place where there should be no trammel it is the legislature. The delegated powers ought to be left free to exercise them. If it is not the intention to give them power to act fully and freely, withhold it from them to act at all. If competent to decide on a question, they are as competent before as after notice. It seems to me in placing it in this attitude, if no notice is required for private acts much less should any notice be required for public acts, and therefore this ought to be stricken out also.

MR. SOPER. Mr. President, it has been a subject of complaint as long as I can remember of this conferring upon individuals special privileges by which they can unite their capital so to use it among the people at large as to enrich themselves at the expense of those people. Take for instance a banking incorporation if you

please, or ferries, or any other act that may be required: now the objection that is urged, as I understand it by the gentleman is that you are trammeling the legislature; that you should leave the safety of the people in the hands of their delegates. I apprehend that this is a mistake. I have known, sir, myself where I have lived of applications made year after year for acts of incorporation and they were unable to obtain them. Why? It is to be obtained by so working and managing as to get a friend of your particular object you have in view into the legislature and if you can privately get your friend there and there is no public notice given by his ingenuity in the legislature he may get the very thing which the people in the neighborhood may be very much opposed to. Now, again, sir, talk about the expense; why there is nothing in that. The expense of a notice would not amount to five dollars, and what is that to the advantages to be derived from an act of incorporation? It does not enter into the account at all, sir. You take and retain this section, and if gentlemen by their management get an advantageous act of incorporation which will not prove satisfactory to the people whose business is carried on or upon whom it is to operate—I say if there is an act of this kind obtained those people ought never be permitted or would not or could not raise any objections if they had received a full and fair notice of the intention of the parties before the application was made and the act was obtained. Now, sir, the object of this notice is this: If it be for a beneficial purpose that the people may unite in petitioning for it. If it be for a purpose that is beneficial in the neighborhood where it is intended to be, then it enables the people to remonstrate; it gives them time to get up their remonstrances, to get up their meetings, to have resolutions and remonstrances signed and sent on to the legislature at their opening so that they can meet the application at the time it is made and have the whole matter come before the committee at once. I am satisfied, sir, that this is a very wise provision of giving notice; and there are a great many private acts where undoubtedly the notice ought to be given but I made that motion to strike this out because they are few comparatively and the evil resulting from the want of it probably would be less than the inconvenience given to the great mass of the public who want acts passed for their benefit particularly those that require immediate action, and I could not see how to discriminate. But I am opposed to any act of incorporation for any purpose unless this public notice has been given so that the people at large may be apprised of the application and either give their

assent or their dissent, or have an opportunity to do so. It certainly can work no evil to the legislature. Gentlemen in applying for this company will know what this provision is. They will have everything prepared for the session of the legislature. It cannot throw any obstacle in the way of the legislature at all. And, sir, this is the object of general laws, as I understand it is to prevent the accumulation of legislation. Now, sir, in the history of states that have adopted these general laws, I believe their legislatures have been run down with these repeated applications for acts of incorporation; and they who have got these acts of incorporation are generally connected with large moneyed capital and they have got their friends to besetting members of the legislature in order to carry their acts of incorporation—got their lobby who are paid from one source or other. And it has been considered a grievous system of legislation, as it excludes the private individuals who could not use the means to operate on gentlemen in the legislature to do their business to the exclusion of these large and rich applications. That has been one great reason, sir, which has led to these laws on private incorporation. And even here since they have been in operation, the ingenuity of men who have managed the capital in this way has got advantages which the people would be very glad to get rid of now in many instances where they exist. I am satisfied no inconvenience to the legislature can occur. They will not be retarded. They will be accelerated and aided in the performance of their duties for the reasons I have before given and the mere expense that is talked of will not be looked at. I am in favor, sir, of retaining the section as it is.

MR. STUART of Doddridge. I am very much in favor of the resolution as it stands now amended. I am more in favor of the latter clause. It recommends itself peculiarly to me on that account. It says "or to confer additional privileges on the same." All gentlemen who have watched the operations of our legislature of Virginia will see, sir, the influence and control the incorporated companies in Virginia have had over our state legislation. Generally about the winding up of the session there has been more champagne and port wine used by these incorporated parties for carrying through their measures at the heel of the session than will perhaps be imported for many years, especially if the blockade is not raised. Now I am in favor that before additional privileges shall be conferred on these companies that they shall give notice of at least six months in order that the people shall know the

object and intention of them. Why these incorporated companies, sir, have been almost the ruin of our country. I believe it has been the incorporated companies that have brought upon us the large state debt we now have. If they had been properly restricted and the people had been made acquainted with the bills that have passed for their especial benefit they would have instructed their delegates and it would never have been done. Give the people notice and stop this legislation, this kind of "log-rolling" which is gotten up at the end of the session. I never want to see such a state of affairs inaugurated in the new State of West Virginia. And I believe this will be a great remedy for legislation of this kind. If they desire special privileges, let them give proper notice so that the constituencies of the legislature will know how to instruct them. Now, you all know that it is a fact that these things have used and these incorporated companies have held great influence in controlling our state legislature—a kind of log-rolling system they have had; and I believe the adoption of this provision will have a great tendency to check that thing; and for that reason I will support the section as amended.

The question was then taken and the section adopted.

The next section was reported as follows:

"39. No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be restrained, molested or burthened in his body or goods, or otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion; and the same shall in no wise affect, diminish or enlarge their civil capacity. And the legislature shall not prescribe any religious test whatever; or confer any peculiar privileges or advantages on any sect or denomination; or pass any law requiring or authorizing any religious society, or the people of any district within this State to levy on themselves or others, any tax for the erection or repair of any house for public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make, for his support, such private contract as he shall please."

MR. LAMB. I presume there will be no difficulty in regard to this section. It embodies in the Constitution the act of religious freedom drafted by Jefferson. The same provision in the same words is contained in our present Constitution. It is not often I quote that. I must, however, confess the authority to the Convention.

The section was adopted.

The fortieth and forty-first sections were reported and adopted without comment as follows:

"40. The legislature shall not grant a charter of incorporation to any church or religious denomination; but may provide by general laws for securing the title of church property so that it shall be held and used for the purposes intended."

"41. The legislature shall confer on the courts the power to grant divorces, change the names of persons, and direct the sales of estates belonging to infants and other persons under legal disabilities; but shall not, by special legislation, grant relief in such cases."

The forty-second section was reported as follows:

"42. The legislature shall pass laws to protect the property of the wife against the acts and debts of the husband."

MR. BROWN of Kanawha. Mr. President, I must enter my dissent against this proposition. It is in violation of the law of our land. It is introducing a division of goods and chattels, rights and credits, interest and assets, and I have no doubt, carried into effect, will introduce a division into the household. The fundamental doctrine of law that has come down to us has ever been held in this State that man and wife are one and the same; that all their property is common; that they take each other for better or worse; they cast their fortunes together and their destinies as well as their assets: and I am satisfied, sir, from past experience that it is best. This introduction of this new idea—I believe it is a French one—of separate assets in the wife, in legislation and all that, prevails in the code of Louisiana. I have had some intercourse with gentlemen there as to the way it works (with doctors and lawyers) and one of its operations is that one man sets up to manage the estate of another man's wife. That is one of the highest objects to be attained in a professional character. The tendency of it is to create that state of dependence on the part of the husband towards the wife, if the wife owns the property and wears the "breeches" and is protected in the whole management and supervision of it. That is inconsistent with the relationship they bear. I presume gentlemen of the Convention read the paragraph that appeared not very long ago in some of the Louisiana papers in which there was an account of a gentleman whose wife lived in style, who goes to a tailor to get his breeches patched with an order from her that the tailor can do it and she

will pay for it. Now, sir, that is indicating just the state of things this legislation tends to bring about. But again I hold it has another evil tendency. You see a wife with a large property, and the parties live together. To the uninformed portion of the world there is a gentleman of fortune. Business transactions are carried on, debts incurred, liabilities assumed; and the community everywhere who are not conversant with this subject trust to any amount without knowing exactly how the relationships exist between these parties; and when pay-day comes, a suit is brought and judgment rendered; the sheriff goes to enforce the judgment and is informed, "This is not my property; it is my wife's." Now, sir, that is the tendency of this state of legislation. I hold if these parties live together, travel life's road together that whatever one has and enjoys the other participates in. If poverty and misfortune come in at one door and fortune and fame go out at the other, it is best that they both go together. If the husband lives on the wife's property on the one hand and she enjoys all the privileges of his property, it is only right that they should all go together and no distinction in property. I desire to see this clause stricken from this Constitution, that our husbands and wives in this land shall stand as they have stood heretofore, "one and inseparable now and forever." (Smiles.)

MR. SOPER. I am in favor, sir, of retaining it, or something very much like it. The old doctrine on this subject, I believe, at the present day—in many states of this Union, at all events, has gone out of use, and this new proposition for the protection of the private property of a married woman has taken its place and has proved very beneficial. In the first place we all know that the female is a person that requires more protection than the male and if she is so unfortunate as to get a dependent husband, or an unprovident one—

MR. POMEROY (in his seat). Or a secessionist.

MR. SOPER. Or a secessionist—very well—I think, sir, that a provision of this kind protecting the female from such misfortunes is a very beneficial one. Now, there are other circumstances, sir, that I could name—instances which I probably may say I have some knowledge of in Virginia and in some other places. Take if you please young men residing in the city of Wheeling, each having married a wife with $5000 of her own money. Two or three of them unite for the purpose of going into a large manufacturing

establishment or a large wholesale establishment. Is there anything wrong by any individual to have the law so fixed and have it understood before even these individuals contract any debts—is there any evil that can result from it, sir, by having the fact incorporated in your Constitution and well known and understood that the wife is the owner of that property and that it is to belong to her individually. I apprehend not. The gentleman then goes into trade upon his own $5000 capital, in connection with a company, immaterial how many. And for some cause or other, if you please unforeseen accidents and misfortune, or if you please improper conduct produces a bankruptcy of that business. Now, is it right, equitable and just that the wife and the children who probably have been remonstrating against the course of the husband shall be left helpless and the property they had received from their parents or some other source shall be taken in order to pay those debts that have been contracted either by misfortune or misconduct? I apprehend not. Suppose here is a number of gentlemen that are prudent and economical men and have gone on with a prosperous business and have been so unfortunate as to trust out their means into the borders of secessia and have lost all their property in this unfortunate and wicked condition of things without any indiscretion of theirs. Here is all the earnings of their lives gone instantly, and will you then take away everything the female has and leave the woman without any protection whatever? I apprehend not, sir. There are thousands of individuals in the United States who if it was not for the property placed in the possession of their wives when they were in prosperous circumstances would be dependent on the charge of the public at large for support. And I believe the experience of many business men has shown the wisdom of this provision and I wish gentlemen to take and reflect upon it and have it so understood. Now, I know very well that where a man and his wife live together, the individual may to a small extent represent that he is the owner of the property and may get some credit, and when pay-day comes he may turn over and say the property belongs to his wife. But, sir, if you incorporate it in your Constitution and have it in the laws passed by your legislature, it will not be long until every person in the community understands what this law is, and then the wife has got the reputation of being the owner of the property—and that will become a matter of general reputation because people in the neighborhood will know it and it will be understood and it cannot be used as a secret combination between the two nor get the ad-

vantage of innocent individuals. That difficulty cannot arise, sir. And then it comes back to this proposition: Shall we alter the old common-law doctrine on this subject? Then it makes no difference how unfortunate a man was, or how it came he got in debt that not only his own estate should go but that shall be taken away which is taken for the protection of his wife and children; they may lose that also. I am in favor, sir, of this section as it stands. But I want it to apply to the property that belongs to the wife, property that she receives from other sources than through her husband; or if she receives it from her husband it shall be attended with such public acts, recorded in your county, if you please, so that the public at large shall get it. That it shall come from the husband at a time, shall be liable for all debts he was liable for at the time the property was conferred on the wife. I want to protect the community at large. Gentlemen of the Convention will see that the object I have in view is not to aid and assist in the perpetration of a fraud but to prevent the perpetration of a fraud and at the same time protect that class of women and children of an unfortunate man from poverty and want. That is the object of it, sir, and I think it a very wise and beneficial provision in the Constitution.

MR. STUART of Doddridge. I feel like raising my voice in favor of the protection of the female portion of our country although it even goes to parting man and wife asunder, as the gentleman from Kanawha says. I have seen so much evil grow out of this thing, such griefs and bitter wrongs perpetrated on this class of our community that I feel like it is incumbent on me at least to pass some law here in our Constitution to compel the legislature to pass acts protecting the property of the wife against the debts of the husband. I have never had to encounter what I have seen in other instances and I hope never may but I appeal to all the members of this Convention: I presume most of them are husbands and have children. If one of your daughters should happen to marry a man who should turn out reckless and improvident you would certainly desire to place property in the hands of your daughter and that that property should be protected against the acts of the husband and the acts of your son-in-law. If I should happen to leave any of my children and have means to bestow on them, why I would like to have the assurance that my children and my grandchildren, the offspring, would not come to want if I had the means of relieving or preventing it. Unless there is some law of

this kind, sir, though I admit frankly the legislature could pass an act without being so instructed in our Constitution; but I want it to be a constitutional provision because it is for the protection of the weaker class, the female portion of our country, sir, who are not prepared and not so well guarded against the acts and frauds of the stronger. Many times you have seen it. There is nothing like illustrating a thing of this kind in order to see the propriety of this action. There is nothing like an illustration, at least, to enforce an argument on my mind. You have many times seen it, sir, that some reckless, loafing fellow will take it upon himself to hunt around for the purpose of marrying some innocent girl who is unaware of the snares and besetments of the world, who is taken in by this fellow. Well, sir, this fellow will dissipate perhaps in a year or two—I have seen it done in six months—all the property of his wife; leave her a charge upon the community and the helpless offspring that perhaps will go to the poor-house or some charitable institution. Is it right? Is it proper? Is it not right that this class should be protected? It can do no wrong. And even I think a husband should have the protection and assurance that he could bestow on his wife certain estate if he desired to do it while he was in circumstances to do so, if he did it publicly so the country would know it. I would like if I had the means and had the intention of entering into any speculation, to bestow a portion of my estate peradventure I might be unfortunate, on my wife in order that she might not come to want from any improvident act of mine; and if I give proper notice such as I think legislation would require, under this section of the Constitution, it can work no harm to any living creature but goes to the protection of the wife and her children, and perhaps save the community from having to support and take care of helpless children. A means, perhaps of educating; otherwise they might be thrown on the community ignorant and uninstructed. But if the father and husband, while he has ample means to do so, will in his discretion lay out the means and set apart something in order to prevent his wife and children coming to want. I would like, sir, that after she obtained this property there should be a law to protect her in it. It would be a general good; result generally for the benefit of the whole community; operate against the interests of nobody. But it will be for the protection of the weaker class who are not here to be heard for themselves. I am decidedly in favor of it; will vote for it.

MR. LAMB. I do not intend to argue this question, presuming the Convention is ready to vote upon it; but there is just one point that I want to refer to. The gentleman from Kanawha asks us to adhere to the old common law in regard to this matter. That common law was evidently made by the men—made by one part of the community only it says the husband and the wife shall be one. What is meant by this? Why, simply that the wife have all rights to the property and everything else that grows out of existence; and the husband takes the whole and says the property shall be common. Does this mean that they shall have equal rights in it? Not at all. The property is made common by transferring everything to the husband and leaving no right to the wife. This is a great abuse of terms as well as an impropriety in legislation. A wife ought to have some rights. Besides, when the law assumes that a wife is nobody I take the liberty of saying it is not a fact.

MR. BROWN of Kanawha. The gentleman meets the argument by saying that the common law which has borne the test of many years and has come down from perhaps a thousand past was made by men. Well, sir, that is a high compliment, in my estimation. That the husband and wife shall be one I think is said in Holy Writ—"and they twain shall be one flesh"—and I think He who spake as never man spake said they should be bone of each other's bone and flesh of each other's flesh.

MR. LAMB. It doesn't say that they shall be one by the wife being nobody and the husband being everything.

MR. BROWN of Kanawha. There is very high authority for this unity—the very substructure and basis of all society. Governments may rise or sink but whenever you sink the basis of society on which the government rests you have gone far to bring disaster on your country. Here we have the experience of the past, with all the wisdom of the past, to uphold and sustain this relation and this right of property between the two as united in one. But I hold, sir, unlike the gentleman on my right (Mr. Stuart of Doddridge) that the individual that may care—because there never was a government in which some hardship will not exist arising out of the bad conduct or the misfortune of individuals; but I hold the great object in framing a constitution is not to look to individual instances but to look to the public good and that, sir, is to be secured by preserving the marriage relationship, the sacredness between the husband and the wife; and when you have done that

you have enriched your nation; for if you stripped it of every solitary dime in the realm it would be rich indeed if you preserve this, and if you lose it all is lost. There may be particular hardships in the cases enumerated; but the gentleman's remedy is no remedy. Because every one knows the husband will spend the wife's means and he will sit there like a blackguard and use her property as it is doled out from year to year. He will be the same individual living and existing off the property, and the annual stipend that is paid over by the trustee or person who intervenes between them will be the first to absorb it. If he is a drunkard, he may drink, but unless you put him in jail and appoint a guardian and take him away from his wife, you cannot prevent it. That is one of the evils of the man's conduct. One of the great evils to my mind is this very introduction of this feeling of independence of the wife as between him and her. The very thing that makes sacred the relationship between husband and wife is that between them there is no third party. Fathers, mothers, brothers and sisters may have all different interests; but the husband and wife never should have but one; and if you divide their interests you divide their feelings. But you unite the interests of any two individuals, however hostile they may be and it melts away and they coalesce in feeling. It is the same way in communities. Then our object is to preserve sacredly the relationship between husband and wife from which all the best interests of society spring, by not introducing a distinct interest between them that may grow from day to day. Is it possible the wife can have the same respect for her husband when she feels every day that he receives his bread and has his pantaloons patched at her expense? Cannot do it without an order from her? Can the husband feel the same respect and regard for the wife from whom he receives these benefits? Why, sir, to command respect they must entertain a mutual and high regard for each other. We have seen—we know the fact—that if you give to a married woman large estates and give to a spendthrift or worthless husband who lives in her halls that he will continually dupe the most of the community, the ignorant and unsuspecting and always draw them in and live and fatten on their property, and then answer: this is not my property and you should not have trusted me. The wife says it is my property; you must look to the husband. I think, sir, inasmuch as the wife is entitled to her share of all the husband has, and the inexorable mandate of law says she shall have it, the same community of interest ought to exist, and her property should be put into the

common fund out of which the dower is drawn and the creditor should have the rest. I am satisfied this doctrine that has been so long in this land and in England is decidedly preferable to this French idea that is lately introduced. And, now, consider another thing and compare the society of England and the United States and France and see wherein the virtue of the family shines brightest. I maintain where this doctrine prevails the virtue of the woman has no comparison to that in which the common law doctrine is maintained. Where the woman takes the husband for weal or woe, where they rise they grow rich together and if they sink let them go down together. I hope to see that perpetuated in this State. Let those who sigh for an experiment in the marriage relation do it out of their own state. I am satisfied you will find that corruption and jealousies and all kinds of misconduct is existing wherever this doctrine is carried out, and the loss of virtue and self-respect will be the consequence. Give me this good old State and good old society as it has come down time-honored and revered by age and wisdom!

MR. CARSKADON. I entirely concur in the opinions enunciated by the gentleman from Kanawha; and I think we would do very wrong in interfering in any way with the relationship of man and wife; and I am perfectly satisfied that any such legislation is an interference or would have that tendency from the relations of man and wife. I admit, as the gentleman from Doddridge has said, that there are, and I have seen many instances myself in which the property has been squandered by the husband; yet, sir, the evils that would arise out of any such legislation are far greater than the good that will be accomplished thereby. For there is not the least doubt that such a state of things would alienate, the affections of the husband and wife and the social relations of man and wife, the enjoyment of domestic felicity, are not to be compared with dollars and cents. And I agree with the gentleman from Kanawha, giving to the wife one third of the real estate is all the protection and the wisest provision, I think, that has ever been originated for the security of the rights of the wife. She has by the common law her third of the real estate and that is generally sufficient for her maintenance and to interfere in any way, I consider the cure worse than the remedy which is proposed to be effected. The gentleman speaks of making a provision in case through misjudgment of the girl she should get hold of the wrong man. I think that is altogether the duty of the girl herself and her

parents to see that she is rightly wedded and not the duty of the legislature or Convention to make laws to suit cases. I am in favor of striking out the provision.

MR. HERVEY. It seems to me this section is unnecessary at least. The objection stated by the gentleman from Doddridge it seems to me is already provided for. If it should be his fortune—and I hope it may be—to be blessed with an abundance of this world's goods and he wishes to provide for his children hereafter, his daughters especially, he can do so without any difficulty at all by a deed of trust or by making his will if he thinks he is going to die; and even if he should himself fail during his lifetime to make any of these provisions and die possessed of large real estates—which I hope also he may—that he may live a long time and die full of lands and riches—the law protects his daughters in this land and houses. They cannot be sold for his debts and his liabilities. Besides that, sir, before parties go into a marriage, they have the privilege of entering into a contract by which all the property, or any specific property, of the wife may be protected from the acts, debts and liabilities of the husband. We already have laws looking to this very state of affairs, providing the means by which the property of the wife may be protected against the acts and debts of the husband; and I suppose when this new State goes into operation we will go into operation with the existing laws so far as they are not in conflict with this Constitution and so far as they may not be altered by this legislature. These same laws will protect the rights of the wife as far under the new Constitution as they protect them now. Moreover, sir, our courts are the best place to settle the rights of the wife and husband. They are wiser, they are more slow in their motion, they give more consideration to all these questions when brought up than a legislature would. I have more confidence in the judiciary supported and sustained by a long course of decisions than I have in the wisdom of the legislature. If it should become necessary, I would not, perhaps, object to the clause if it were optional with the legislature to pass such laws or not; but as it reads now, it is obligatory on the legislature—"the legislature shall pass all laws, etc." There is another thing: if you want to make it obligatory on the legislature, to make it protect the property, you ought also make it obligatory on them to protect the property of the husband. There are many cases where the "gray mare is the better horse," where the wife is extravagant and the husband suffers.

It is true this old commonwealth doctrine may have been made by men, adopted by them for their own peculiar benefit, but it has been modified, enlarged, liberalized if I may use the term, from ancient times down to the present day, until under existing laws and rules of construction in the State of Virginia, the wife's property may be effectually protected against the acts and debts of the husband. Why, sir, the husband's creditors cannot get hold of the husband's property if he happens to die intestate without making a provision for the wife. Our courts are gradually advancing towards a protection of this property of the wife against the acts and debts of the husband. Now, this requires the legislature to take hold of this matter at once and make all the laws that in their judgment shall be necessary to protect them. I believe, sir, heretofore when differences of opinion and difficulties have arisen in the judgments of the supreme court, the legislature, whenever it is thought necessary has taken up the question and indicated it in the form of statute law. Some cause could be cited in which these difficult questions had been settled finally in this way. I think we would have that language plain in a case of that kind. Let it be optional with the legislature. Let them under their general authority pass any law it may hereafter see proper or not pass it if it thinks it not necessary. For these reasons I am opposed to the section as it now stands.

MR. SOPER. The gentlemen that favor this motion I apprehend do not look at it in the way that is intended to operate beneficially. Now, the objection urged is that the profligate husband by means of having a wife with property will obtain credit with unsuspecting individuals; and when he gets the credit he will turn around and say to his creditor, "Why, this property belongs to my wife." Now, sir, the very fact of putting this provision in your constitution prevents this. It gives notice to every man who reads the Constitution, and it gives notice to the legislature to pass laws which will become well understood throughout the whole State; and if a woman has been so unfortunate as to get an intemperate man it is well known in the community that everything depends on the wife. But then up comes another objection. Why, it is demeaning a man that he should have to go to his wife for an order to pay his tailor's bill. Is it demeaning a man living on the charities of his wife, so degraded as not to be competent to take care of himself—who has no character in the community—to say that he can be demeaned by having to ask his wife for an

order to pay the tailor? O, but says the gentleman, you are going to produce discord between the man and wife! Is that so? Would not that individual be as humble (amiable) to his wife as to any individual who would support and take care of him. And if he should resent it, would it not be right for the wife who had her own means to pay his board, if she had an affection for him as the father of her children? Would not it be preferable, sir? Well, now, again. What does the gentleman propose by having this old rule here? If it is said that the property of the wife ought to go for the payment of his debts? Still what do you do then? When all the wife's property is gone, could the husband support the wife? Property gone—friendless—where then do you go? Why, they go to some charitable institution for your protection. Now, where is the greater evil, sir? But says the gentleman from Harrison: O, here the laws of the land provide for all that; and so does the gentleman from Kanawha. So we hear a wife has got a right to the house, to one-third of her husband's property. But as long as the husband lives she has no interest in it, and during the miserable existence of this miserable husband this unfortunate wife and children shall be subject to penury and want. Now, sir, if we can guard against such a state of things ought we not to do it? And particularly when we are committing no wrong? But says the gentleman from Harrison, the laws will protect all this thing. The father before the daughter marries can place the property in the hands of a trustee who can hold it permanently for the protection of the daughter. Why is there a father in a thousand who bargains away his daughter in deeds of this description? I know that is the law, but yet it does not reach the case. I have given my views here to show the operation of this law and to show that even in the case now stated here the provision for a trustee does not really provide an adequate protection for the property of a married woman. Another class of cases. Here is a father who suffers his daughter to marry an individual her equal in every respect in character, in property, a man of activity, of energy of sound sense and judgment and of economy in the management of his affairs; a man that is prosperous in the community. And yet, as I stated when up before, owing to this secession which has produced ruin, thousands and thousands of our prudent men in this country are perfectly bankrupt and are now depending entirely and living entirely on the property of their wives which was protected. They are hampered with their debts, they cannot go into business and they are tied down; and unless Congress passes a

bankrupt law and relieves them, they must remain dependent and miserable in suffering and want, not only themselves and their families but their whole lives unless their creditors forgive them their debts. Now it is against this class of individuals that this law is intended to protect. And when this law goes into operation, no prudent young man having received property from his wife, no father who wants to bestow property on his daughter or grandchildren, will jeopardize that property; but they will take and fix it in the right of the wife when it can always be used for her protection and for the maintenance of her children. Take as I before remarked: here are the young men starting out in business. The wife's property is protected. The husband has $20,000. He settles $10,000 of it on his wife. It is made public. (No need of your requiring fees.) He retains his remaining $10,000 and goes into business; and if from some unforeseen cause or other, he fails and loses that property, why until he can get relief from his debts he can fall back on that property of his wife and she will be comfortable, and both will be, and the cords of affection will be made stronger. But no individual will be injured, because they have full notice of it before he went into business and it was well known and understood. It was not the basis of any credit which caused his debts. Now will gentlemen look at it, and they will at once see the beneficial provision there is in this law. But now again here comes private influence. The husband wants to be the lord. He wants to lord it not only over the person of his wife, but over her property also; and if I understand the scope of the argument it is, why it is rather belittling a man, degrading him. I apprehend there is no sense in that. Suppose the husband and wife to be one in interests and feeling that he is a prudent man and goes on prosperously and lives pure and grows up with respect and credit in the neighborhood where he lives, who has a right to think that man degraded because his wife happened to be on an equality with him so she could control her own property as he did his? The neighborhood would not find fault because they both had plenty. It would be a mere matter of feeling and pride and no one could be injured. And no one would be particularly benefited by it: because they all had enough. This provision would be unnecessary if all men were of that description. It is the unfortunate that are to be protected. The unfortunate from acts which were unforeseen at the time the wife received the property. Or if you please, suppose the husband had lost everything he had. This law in a very easy simple manner would

enable or the relative or friend to bestow on the wife and family the property which would be intended and used for their subsistence. Now, sir, I apprehend in any point of view gentlemen will look at this, when you compare the advantages that are to be derived from this provision in the Constitution and the disadvantages that would arise under the old state of things, every gentleman must see the propriety of retaining it. Well, now, another objection of the gentleman from Harrison is this: if the phraseology of that act was so left as to make it discretionary with the legislature he could have no objection to it. Why, sir, I suppose the legislature would have the right at any time to pass laws for the protection of the married woman without having any constitutional provision about it. But it never has been done, I think in this State. I see from that argument it is merely wanting to give this provision the go by, impliedly admitting its correctness. But gentlemen say we are not competent to decide affirmatively on the proposition. That is the result of the argument. We have not got knowledge and experience enough to say it shall become the law but it shall be left to some future legislature to pass on this subject. I am opposed to anything of that character. I am for meeting the question fairly and squarely and for saying I will support this provision here and take care of the private property of the married woman through all time. If she sees fit to give it to her husband, that is a matter we have no control over. She shall have the absolute disposal of it. I hope the section as it reads may be adopted, and then the legislature will pass such qualifying laws: I mean, now, for instance, the wife, if she receives property from her husband, or has got a further estate, it ought to be subject to all the debts the husband owes at the time it was conferred on her. I have stated a case where the husband gives one-half his property to his wife and trades with the other half. If at the time he commences trading he was indebted one thousand dollars and he should neglect to pay in the course of his business and it should be a debt that existed at the time he conferred the property on the wife, I should say that thousand dollars ought to be paid out of the property of the wife; and it will be for the legislature to see and guard against any emergencies of such a character. Now, sir, while I am maintaining this provision, I utterly repudiate the thought of laying the foundation for the scheme of any fraud whatever. I hope, sir, the section may be adopted.

MR. BROWN of Kanawha. I beg one word in reply to the gentleman who has just taken his seat. He has told us that my friend from Harrison has informed him how the law now stands and avoid the evil the gentleman from Doddridge indicated. Whenever the father wanted to make provision for his daughter he had nothing in the world to do but to convey his property to some friend who would take care of it and the gentleman says not one in a thousand would bargain away their daughters in that style. Well, sir, what is he proposing to do with this thousand fathers who would not bargain away their daughters? He is proposing to make an assignment in this provision—an assignment of all the men to all the married women in the commonwealth. I stand here in behalf of all the women of Virginia to say they desire no such assignment. Their best protection is in the arms of their husbands and their richest treasure in the treasures of their hearts. Give them their fortunes for weal or woe, for thus they have chosen their fate, and they have all they want. Let the men manage the business and be responsible for the management they give it. The gentleman from Ohio thinks the existing laws were made by the men alone and men will manage this thing, and these women ought to be protected in this particular matter. Why not confer on your women the right to go to the polls and vote? And why not call upon them to go into the armies and defend the country? Why not make a man of a woman at once? No; as written in the constitution sex differences that cannot be obliterated, the high and sacred sphere of mother, wife and daughter are in the household guarded by the strong arm and manly heart of the father and husband and brother who are to manage the rougher relations of the world. They look to these as their protectors; and that is the protection that they are interested in. These additional protections are nothing to them. I maintain this constitutional protection is only another way to destroy the rights of the women. Secure the husbands in all these political relations and secure society in these private relations and you have accomplished all the good the laws can give.

MR. STUART of Doddridge. I do not propose to detain this Convention but a very few moments. I am now speaking as I have throughout for the innocent and helpless. I desire to refer to one or two remarks of the gentleman from Harrison, and the gentleman from Kanawha, as they have had their hitches at it. The gentleman from Harrison predicates his argument on the fact

that there is a law now in Virginia that does protect the property of wives and whereby the father can protect the property of his daughter. Well, now that law may be in Virginia, but it may not be the law that may be adopted in West Virginia; and I will act here, as the gentleman from Tyler remarks, upon principle dictated to me by what I know to be right and not what may hereafter be right. The future legislature of the State which we are now framing a Constitution for may adopt laws or it may not adopt them. It may adopt the laws of our present State as far as compatible with the Constitution we are now framing or it may not do it. It may adopt the common law and it may not. We are here, sir, starting and we should act not upon what we may possibly suppose the legislature may do but what we think ought to be done. And if we think it ought not to be done, why, of course, we will vote against it. But take the law of Virginia. The gentleman from Kanawha says he does not desire to see a third party come in between man and wife. Well, sir, the object of this section that is now before us under discussion, in my view, is for the purpose of preventing that thing—that very thing—the bringing in of a third party; because under the present laws of Virginia—I believe I am tolerably well posted in that—a father can bestow on his daughter and appoint a trustee and bring in that third party between his daughter and her husband. There is no necessity in passing a law for the protection of the property of the wife and bringing in a third party. If there is any necessity for that thing—if it cannot be done in any other way, then I will oppose it. For I never want to bring in third parties. But take the law of Virginia to which I have always been opposed, though it did mete out ample remedies to the female sex in our community —I am opposed to it. I want some remedy here by which it will not be necessary that the father will have to appoint a trustee but that he may give and bestow upon his daughter the property he desires and she can be protected in that property from the debts of the husband. Now, the gentleman from Kanawha seems to think it may lead to inroads on the virtue of the wives and daughters of our community. Protecting the wives of our country by permitting the husband to squander her property and an officer of the law may come in and throw her out into the streets and highways without a shelter to protect her and her offspring! Is that the way to protect the virtue of our wives? Gentlemen, refer to your own knowledge in this matter, your own experience in these things. Where is it you have seen virtue lost, and this

unfortunate class of our community getting lost to all virtue? It is where, sir, they have been robbed of everything, of every comfort, and have been thrown upon the mercies of the cold, heartless world without shelter, aid or protection. There is where I have seen virtue lost and not in protecting the wife in her property. That is not my view of it. It does seem to me the gentleman from Kanawha is mistaken. This is not the way to protect virtue—that where riches and honor leave, the man and his wife march out together—in order to protect her virtue, I suppose! If the father has bestowed on the daughter a home that will shelter her and her children, if the husband through his recklessness becomes indebted and the officer comes and attaches his property in order to protect the virtue of the wife, you may let her go out into the world unprotected, uncared for, with her property gone, her husband careless of her, careless of everything else, leaving the wife and children to be thrown on the community, helpless, uneducated, without the means of education. It does seem to me, sir, there should be a law passed by which this thing could be remedied. But it is not necessary—absolutely necessary—that a man and wife should carry on a separate business, and I do not presume it will happen in one case in a hundred. It will not prevent the wife from permitting her husband to control the use of her property and will not be done in many instances. But where the wife thinks it necessary for her protection and that of her children and that of her home I want to grant it to her. I do not want, as the gentleman indicated, to bring up the wife to the polls to vote, but I want to protect her for the simple reason that she has got this right.

MR. BROWN of Kanawha. I desire to know of the gentleman why in his capacity as senator in the legislature, he has not introduced a bill there for the remedy of this evil?

MR. STUART of Doddridge. Well, sir, I have not much legislative experience, and I would admit frankly here that my legislation at present does not look much to the fact that it will be perpetuated here for my hope and prospect is built up in that of a new State and I hold that just as little legislation as can be done at present is the most prudent thing; and my course, my action and my influence and my votes will go so far as to legislate on nothing whatever now only what is absolutely necessary to be legislated on although I believe I will be overruled to a great extent. But, sir, I admit if things were different, if we were differently situated and it should be my fortune to be a member of the state

senate or legislature, I undoubtedly would feel it a duty to introduce a bill looking to this thing and would do it. But for fear the laws the gentleman from Harrison has referred to would be adopted for the regulation of West Virginia I desire to incorporate something in our Constitution that will make it obligatory on the legislature to pass some law to protect this class of our community. I feel, as I said before, that I am standing here speaking for the innocent and helpless. It is not worth while to refer to what I said in the former few remarks that I made to call the attention of members to cases that have come to their knowledge of cases where grievous wrong has been perpetrated. If we can pass a law let us do it, and if it is right the law should be passed let us so make it obligatory in our Constitution.

Mr. Soper asked for the yeas and nays on the motion to strike out section 42.

The motion was not agreed to, the vote being as follows:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Brooks, Brumfield, Chapman, Carskadon, Dering, Dolly, Harrison, Irvine, Ruffner, Simmons, Stephenson of Clay, Taylor—14.

NAYS—Messrs. Brown of Preston, Caldwell, Hansley, Haymond, Hubbs, Hervey, Lamb, Montague, Mahon, O'Brien, Parsons, Paxton, Pomeroy, Robinson, Sinsel, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Stuart of Doddridge, Trainer, Warder, Wilson—23.

When the roll was called Mr. Montague was asleep. Mr. Stewart of Wirt said, referring to Mr. Montague: Mr. President, the gentleman who was asleep is now awake and desires to vote.

MR. MONTAGUE. I did not hear my name called.

MR. LAMB. Mr. President, I move the adoption of the section and take occasion to remark that there is nothing gained by these motions to strike out, that the ayes and noes may as well have been taken on the motion to adopt.

MR. HERVEY. I move to adjourn, Mr. President.

MR. LAMB. Let us have the vote on the section.

Mr. Hervey withdrew his motion, the question was taken and the section adopted; and on motion of Mr. Stewart of Wirt the Convention adjourned.

XXIV. THURSDAY, JANUARY 9, 1862.

The Convention assembled at the regular hour and was opened with prayer by Rev. T. H. Trainer, a member.

Minutes were read and approved.

MR. VAN WINKLE. The resolution offered by the chairman of the Committee on Expenditures yesterday was laid on the table at my instance. It proposes to authorize the Sergeant-at-Arms to give up the committee rooms, and as explained refers to the end of the time for which they were hired. I apprehend, sir, the rooms will not be wanted after that time; but it is only fair the proprietor should have this early notice of it. I will therefore ask that that resolution be taken up and considered.

The resolution was taken up and reported as follows:

"RESOLVED, That the Sergeant-at-Arms be authorized to give up the rooms at present used by the committees of the Convention."

MR. HERVEY. That I think should specify the time when the rooms are to be given up.

MR. STEVENSON of Wood. Of course, we cannot give them up before the end of the present term.

The resolution was agreed to, with the added words: "At the end of the current month for which they were rented."

THE PRESIDENT. The Convention when it adjourned yesterday evening had under consideration the Report of the Legislative Committee. The forty-third section would be the next question for consideration. Will the Secretary report it?

The Secretary read the section as follows:

"43. No convention shall be called, having authority to alter the Constitution of the State, unless it be in pursuance of a law passed by the affirmative vote of a majority of the members elected to each branch of the legislature, declaring distinctly the powers and objects of such convention, and providing that polls shall be held throughout the State, on some day therein specified, which shall be not less than three months after the passage of such law, for the purpose of taking the sense of the voters on the question of calling a convention for the purpose and with the powers set forth in such law. And such convention shall not be held unless a majority of the votes cast at such polls be in favor of calling the same; nor shall members be elected to such convention, until at

least one month after the result of the polls shall be duly ascertained, declared and published. And all acts and ordinances of said convention shall be submitted to the voters of the State for ratification or rejection, and shall have no validity whatever until they are ratified; and in no event shall they, by any shift or device be made to have any retrospective operation or effect."

MR. STEVENSON of Wood. Mr. President, I have not had time to examine this section much but it seems to me that it would be better to have a two-thirds vote of the members elected to the legislature to call a convention instead of a majority. I shall therefore move to strike out of line 282 "a majority" and insert "two-thirds."

MR. BROWN of Kanawha. Mr. President, I must oppose the amendment made by the gentleman. I shall desire to give the reason for doing so. I cannot free my mind from the apprehension that the gentleman's proposition was superinduced by the surroundings, by the state of the country and the very recent history of it. Now, sir, we are here adopting a Constitution under peculiar and extraordinary circumstances, the like of which has never been witnessed on this continent before. We are proposing a Constitution representing according to the election returns here the very meagerest minority; a Convention whose actual constituents are comparatively few compared with the people of this proposed State. We are prescribing the terms in this clause of the Constitution which is proposed to chain and firmly bind those people in any future alterations. We come here not advised and not from anything that has transpired or that could have transpired in our intercourse with our constituents, agitating and discussing new and extraordinary provisions that are brought into this Convention. We are making changes radical and deep that are wholly new and wholly unknown to most of the people even that we represent. And we are doing it, too, when under every human probability this Constitution is to be submitted back to those people for ratification or rejection, under circumstances that they will be compelled in almost every emergency to take it whether it be good or bad. If we had a constituency free to act, free to discuss the question, impelled by no corrupt influence and power to adopt whatever this Convention shall give them, then it might be fair to present any proposition to the community that they might act upon it. But, sir, that is not so. We are here embarked in an effort to form a new State; that effort is superinduced by the circumstances that surround us. It can only be carried successfully

forward by the very circumstances that are upon us; and if under such circumstances you present the people a constitution with features in it, that they may be opposed to root and branch, but under the circumstances may be constrained to adopt what they hate and detest, then is it not an outrage to trammel them by saying that a majority of the people shall not restore and amend it—to say that it shall require two-thirds of the people to alter this Constitution when, sir, less than one-fifth, perhaps, are fixing and adopting it? Already are we introducing into this Constitution provisions new and unknown to the people of Virginia—provisions, sir, which in the course of a history of two hundred years have never been introduced to my knowledge into the legislative halls at the request of any delegate representing the people of the State; and yet this Constitution adopted by a few is to be put upon the people and then nothing but two-thirds ever can get rid of it. I am one, sir, that expect to vote for this Constitution, whether it contains provisions I approve or disapprove, because there are higher and more pressing considerations that impel us to take it, good or bad, as the least of evils. But when it is presented under such circumstances, I do demand in behalf of the people I represent and every other people in the State that it should not be attempted by this body or any other under those circumstances to trammel the majority of the people in their endeavors to restore their rights and liberties if this is to take them away. It is very much like the Constitution of Kansas that was adopted at Lecompton and submitted to the people of Kansas. They were to vote for the constitution with slavery, or for the constitution without slavery. But no matter how they voted, it was for the constitution all the time. And, sir, the statesmen of the country repudiated it, sent it back, because they said it was at war on republican principles. And I contend it is nothing more than this case; because when this Convention presents this Constitution to this people, it is a dernier resort: there is no alternative but to take it and then if you bind their hands when they have tried it, they cannot get rid of it or cure its defects save and except by a vote of two-thirds, you are placing the whole power of the people in the hands of a meager minority and that is at war with republican institutions. I hope therefore this amendment will not be made.

MR. VAN WINKLE. Mr. President, I am opposed to this whole section, sir, to any such provision in the Constitution. I am willing, however, that those who are friendly to it should perfect it by

such amendments as they may see fit to offer and pass and expect to offer a few amendments to it myself in the hope that they may be adopted and in the case the section should pass it would be more in accordance with my ideas on the subject. This is not as it stands a proposition to limit the power of the legislature over the subject but a proposition to limit the power of the people; and to that, like the gentleman who last addressed us I am decidedly opposed. In the present Constitution of Virginia there is no provision in reference to amendments of the constitution nor calling conventions for the purpose. If this provision had existed, sir, the convention that assembled in June last would not have been constitutional, because it would have been impossible to get a legislature to call a convention. It is very true, sir, that the circumstances in which we were placed in June last, even with such a provision in the Constitution would have justified us in overriding it—circumstances such as would have justified any step on the part of the people to reinstate themselves in possession of their government. But even then if we imagine no such a state of things is again to arise, this is crippling the power of the people over the subject more than it ought to be. It may be desirable, sir, that the legislature should be somewhat restricted in its action in reference to this matter; and among the amendments I propose to suggest is one to introduce at the beginning that no convention shall be called by the legislature except under these circumstances that are provided for. There is another very objectionable feature in it, sir. That is, that the legislature, the inferior body, is to prescribe to the superior body the people assembled directly in their majesty, what it shall do. It is very similar to an attempt that is now making elsewhere to define and limit the act of the direct representatives of the people, to think for us, to prescribe for us our duties and even assuming a censorship because we did not do precisely in accordance with the whims—for it is nothing better—of two or three gentlemen who seem to be monomaniacs on the subject. I should not wonder if some of them went crazy before the week is out. It is now to be determined whether this body sitting here as direct representatives of the people of the new State if it is ever made, whether they are to place their successors, a similar body elected by the people, or in the case supposed here, sent to alter a constitution—whether they are to send to their high mightinesses sitting in another body to know what they are to do. Now, sir, I am against all that. In reference to the call of the convention in 1850, in the State of Virginia, it was called, sir, in pur-

suance of the wishes of the people. It is true, it was not called as soon as it should have been. But the voice of the people was coming up—and coming up—and coming up! And as they sent representatives they were instructed that at last the convention was called. Sir, I took the ground there, as I take it here, in the very opening, in the speech I had the honor to make there on the basis question, I started out with the idea that we were there with a blank sheet of paper on which to write a constitution, not bound by anything that preceded us nor anything else than a just regard to the wishes and will of the people we represented. When, sir, you give to the legislature a power to alter a constitution, the power to initiate alterations to the Constitution—that is, if you give to them the sole power—no doubt, provisions of this kind are necessary; but I can see no reason to confide it to that body or enable them to place restrictions on those whom the people will send there to make it. It is against principles advocated on this floor already from every section. Every man here is instructed, as it were, by his own constituents; and the very beauty, the system and efficiency of republican government is in this; that while every man here is the representative of his own peculiar constituents he is also acting for the whole. Every man comes here in favor of the wishes of his constituents, and he will endeavor to carry them out as far as possible. He is controlled, if not in his own opinions and acts finally by the majority of opinions here, and in that way the will of the people, which is always the will of the majority of the people, is fully ascertained and determined. Who knows, sir, when a convention of this kind meets, what exigencies may arise? Who knows until they assemble and compare notes and learn the views and feelings of the different portions of the State what it may be necessary for them to do. Here, sir, some person or persons having objection to some particular clause of the Constitution as it stands, and desiring to introduce some provision beneficial if you please, have got this Convention called; and as nothing occurred at the moment in reference to other provisions, this Convention, called, of course, at the same expense as if there for other purposes, this Convention is limited to the one thing that happened to be in the minds of the legislature when they called it. But when we come together we find that from one section of the State one amendment is desired, and from another, another, and so on. How is it to be supposed, with these members met here to represent the will of our constituents and with the condition always that the Constitution goes back to their constituency for approb-

ation, that they are to be tied up and trammeled by an anticipatory provision of this kind? There can be no necessity for it.

I am, perhaps, sir, rather wandering outside of the record on the precise amendment before us. I would say, sir, as a general rule I am opposed to requiring any more than a majority of the whole number of members elected to each house for hardly any purpose. I would be in favor, for instance, in reference to these heavy appropriations of money that I was getting the will of the people, because so many private interests enter into that that you cannot be sure that all the members are voting precisely as they should. But in reference to ordinary matters of legislation I think the fair republican principle is that if a majority are in favor of it, it ought to prevail.

MR. LAMB. Mr. President, I should be opposed to the amendment which has been offered by the gentleman from Wood because I think that if a majority of the members elected to each branch of the legislature should be in favor of calling a convention, there would be a very just inference that a majority of the people wanted the convention also. But for another reason, that even if a majority of all the members proposed the section still requires that that proposition shall be submitted directly to the vote of the people themselves before it receives vitality. I think that these are perhaps guards enough in reference to this matter. The people, I am satisfied, are pretty well tired of conventions. But if the majority of all the members elected to the legislature propose to the people to call a convention and a majority of the people approve that proposition where is there any power in this body or any other that can prevent a convention being held? The objections however of the gentleman from Wood (Mr. Van Winkle) strike me as most extraordinary. What is this proposition that is submitted to this convention? That a majority of the members of the legislature may propose to the people to call a convention; that if they do propose it, they shall give distinct notice to the people of what this convention is to assemble for; that the people shall know when they vote on that proposition what this convention is called for, whether it is to pass an ordinance of secession or to amend the Constitution of the State. Is there anything improper in this? Is there anything at variance with republican principles in this? The objection does strike me as most extraordinary. Ought not the people to know when a proposition is made to them to call a convention why and for what purpose that convention is to be

called? Ought not the people when a proposition is made to call a convention to have the right to say by their own votes whether that convention shall be called or not? And yet these are the provisions to which these extraordinary objections are made. I must confess, sir, in regard to this question that I have no such anticipations that we shall be able to make so perfect a constitution that no amendment will be necessary. I want, and have prepared, a proposition for the purpose of amendments without reference to a convention which I will submit when the Convention acts on this proposition. But I do want to provide that unless a majority of the people having full notice of the objects for which a convention is to be called shall approve, there shall be no convention; that we shall be done with it.

MR. STEVENSON of Wood. Mr. President, I do not propose to take more than about two minutes to reply to the arguments which I think have been presented against this motion to strike out. Besides, I intend to make my speeches generally about that length and I hope the members generally will not exceed that.

A good deal has been said that has no relevancy to the amendment under consideration. And what has been said in reference to the amendment, it seems to me, has been based on a wrong supposition to begin with. The premises upon which the gentleman started out to argue are wrong. It is like the man in Scripture who built his house on sand. When the winds rose and the floods came it fell and great was the fall thereof! I do not know that I can say that about the house these gentlemen have built here. It is not a very big one. Now, sir, it is asserted here by the gentleman from Ohio on my left that when a majority of the members of the legislature are in favor of calling a convention it is a correct inference that a majority of the people are in favor of it. Now, sir, I take it that that is, to some extent, a mistaken argument—a mistake of the fact in the case. It is not likely, sir, as a smaller body of persons are more likely to be mistaken than the great mass of the people if they have had time to investigate it. And therefore it is very possible that under many circumstances a majority of the members of the legislature should be in favor of calling a convention while the great mass of the people are opposed to it. But says the gentleman, suppose the legislature had passed an act authorizing the people to decide the question of whether they shall have the convention or not, is not the question still left with the people? To be sure it is. But if you will read the section

you will discover that that act is to make provision by which the polls shall be opened in every district of the State and therefore the people must go to an expense of many thousands of dollars to vote on the question of having a convention. They are sure to vote against it, but in order to have that vote you have an excited canvass all through the State and you add to the expenses of the people many thousands of dollars. Now, sir, you could have avoided that probably, by having a provision that instead of a majority of the members of the legislature having the right to call that convention, or at least authorize the people to vote upon it, it should require two-thirds. I think that argument is answered.

Now, sir, I base my principal argument—and I think it is a good one—in favor of this proposition upon the fact that in many cases particularly in a state of great public excitement such as we had at the termination of the last Presidential election a majority of the members of a legislature may be induced to call a convention and then tax the people with the expense of holding these elections for no purpose whatever but to get a vote on that question which was probably unnecessary at the time. Now, sir, there is a further consideration. Any man who will look at the history of this country for the last year must see that the calling of these conventions under such circumstances as I have alluded to have been the principal cause of plunging this great country into the red sea of secession and civil war. And so, if the legislature is to have this power, I am in favor of restricting them to the utmost limit at least within the degrees of propriety; and I do think, sir, that a provision requiring two thirds of the members of the legislature to call this convention or to authorize people to vote on it, will accomplish that purpose.

In regard to one other argument which was urged by the gentleman (I think) from Kanawha, that it would be a restriction on the people, now I think not. If there is a necessity for calling a convention, it does seem to me if there is any great public question that is to be decided upon and the people think and believe it to be such there will be no difficulty if the emergency is such as that, to get two thirds of the legislature to call that convention; and if there is such an emergency and the legislature does authorize the people to vote on the question of a convention then they will have a convention and the expense of an election and the canvass through which they will have passed will not be for no purpose.

These are considerations, sir, which induce me notwithstand-

ing what has been said against the proposition to insist upon striking out a majority and inserting two-thirds.

MR. STUART of Doddridge. Mr. President, I shall be even shorter than my friend from Wood. I only want to give the Convention one illustration. If this provision had been in our Constitution of 1830, we never would have got a convention—never! It would have required two-thirds of the legislature to submit the question to the people. It will be recollected that the whole northwestern country and the valley of Virginia were unanimously in favor of the calling of a convention, which was pretty near an equal division of the eastern portion of the State in favor of and against it. Under these circumstances, one-fourth of the people of Virginia would have controlled the action of the state legislature and we never would have had a called convention. The same state of things may arise again. We should avoid this thing. Adopt this amendment of the gentleman from Wood and a little over one fourth of the people of the State may hold on to the present Constitution we frame in opposition to three-fourths of the people and they never can change or alter it. Because there will be local interests. One half the State may be unanimous while the other half may be pretty equally divided and the one-fourth will control the action of the legislature and will hold on to a constitution that three-fourths will be opposed to.

MR. BROWN of Kanawha. The gentleman from Doddridge has given us one illustration of the bad effect that a provision of the kind proposed in this amendment would have had, and it is a practical one too, of a practical bad effect. Now I propose to give him another practical illustration of the total failure of his amendment to meet the difficulties in the emergency to which I had supposed the gentleman alluded in making the amendment. Now, sir, will any one remember what was the vote by which the Convention was called by the legislature in 1860-61? I do not precisely remember but if I am not very much mistaken, it was very largely over two-thirds. That there was no difficulty at all in carrying it no matter what had happened the prohibition in your constitution. And I am free to say if it had required unanimity I have no doubt they would have accomplished it then. So that while this amendment only trammels the people in obtaining any necessary amendment to the Constitution in ordinary times of peace, when they are seeking to get rid of evils that experience has proved to exist in the Constitution, in these times of excitement, of revolution, of

determination amongst the most of men to tear up and tear down the government of the country, then, sir, your Constitution and all your restrictions are like chaff. They never stop the mandates of the people when they rise in their might or even large proportions of them. So that restrictions intended to stop the very evils we have been witnessing lately wholly failed to accomplish the end. They furnish trammels against illegal action in ordinary times of peace but fail to relieve the very difficulty they are intended to reach. Whenever you find a people rising to the position our people attained to very recently, then, sir, no paper constitutions, no power or government or anything of the kind but absolute physical force by numbers and by steel can maintain the government in its organized course and provisions. Constitutions are as nothing before maddened men and they in numbers sufficient to execute their designs by force. It is idle and useless for us to frame a Constitution predicated on the position that a restriction to two-thirds of the legislature is going to prevent such evils as we are now passing through. I therefore cannot go for this amendment.

MR. RUFFNER. Mr. President, I rise merely to dissent from one doctrine announced by my colleague here, that the people of this new Commonwealth are going to adopt whatever constitution may be prepared by this Convention for them with all its errors and defects and its total changes in our accustomed institutions whether they approve them or not. I for one, sir, dissent from any doctrine of that sort, and I say the people will be free to canvass this Constitution and accept or reject it according to its merits.

MR. BROWN of Kanawha. I rise for an explanation. I do not desire to be understood as my colleague has understood me, that we are going to adopt this Constitution with every error in, but I intended to present this idea that under these circumstances we are much more liable and likely to do it. This Constitution I admit may be made so bad that with all my disposition to adopt it, I may be compelled to reject it and thousands of my fellow citizens likewise. But the idea is that we are much more likely under this pressure to adopt than if we were entirely free to discuss these questions.

MR. HAYMOND. I am in favor of the motion of the gentleman from Wood. I do think, sir, that to call a convention we

should have two-thirds. Our legislature, Mr. President, is generally filled up with politicians whom I and the people have very little confidence in. I think therefore, sir, it would be best to require two-thirds of them to call a convention.

The question was taken, and the amendment was rejected.

MR. STUART of Doddridge. I move to amend by striking out all after the word "legislature" in the 283 line the words: "declaring distinctly the powers and objects of such convention and," I think, Mr. President, it must be apparent to members of this Convention that this should be stricken out. I cannot understand the object of it. If in declaring the powers and objects of such Convention it is the object of the framers of this section to confine the action of the Convention to specified objects and that we shall not go outside of it, it does seem to me we have not got that power; and if that is not the object, I can see no use in it at all. The act that called us into existence, I believe, started out by declaring our powers and duties. Still we certainly fall very short of being governed by the ordinance that called us into existence. I understand that when a convention is called that that convention is supreme in power, that it knows no power above it, that it is equally true of our successors, that we cannot pass a law that will bind a future convention, who has as much power and control as we had. And I understand, when a convention is called as the gentleman from Wood remarked (Mr. Van Winkle) that our constitution is as a sheet of blank paper and the people have a right to frame and adopt a constitution new and entire without any reference whatever to the constitution they have formerly been living under. We are bound in our action by no constitution, by no legislative body defining our powers and duties. If so, sirs, we had better adjourn. Quit our labors at once, because we have far exceeded the powers that have been given to us if a legislature can control our action. It does appear to me, sir, that these words ought to be stricken out of this section unless we are governed now by the action of our present legislature. Who seems to think that we ought to be controlled and dictated to by them? They do not consider that we are legislating for the new State and adopting a constitution for West Virginia and that they are a legislature for the State of Virginia and they have nothing in the world to do here. And when a legislature calls up the subject to know whether they will have a call for a convention, it does appear to me that legislature has no right to define the power and

duties of the people; and that people have a right to speak in this thing; and that their delegates whom they select ought to have the power to control this matter and will know what the people want and not the legislature. The legislature is the mere servants of the people. The Convention is the people themselves. They come up by convention; and when they go there it is just as though a blank piece of paper was laid down before them and they know no other power or authority but the people. Merely submitting the question to the people and we defining the powers of the convention which the people may desire to call together and elect seems to me is perfectly absurd.

MR. LAMB. Mr. President, I have been laboring, if the gentleman's doctrine is correct, under an entire misapprehension in regard to this subject, from the commencement. I started on the principle that all power rests with the people, is derived from the people; that the people can confer such power as they please on a convention or legislature or any other body. If it is proposed to the people, it is not the legislature limiting the power of that convention at all. If it is proposed to the people to call a convention with limited power, to call a convention under a law which specifies the objects for which that convention is to assemble, and the people do call a convention for that purpose, then, sir, the convention has no more power than the people have conferred upon them. That is my doctrine on the subject; and I do utterly repudiate the doctrine that it is impossible for the people themselves to call a convention unless that convention is an unlimited tyranny. I say the people have a right to call a convention for this purpose or for that purpose; and you look into the law under which the convention is called and you see the purpose for which the convention has been assembled. Still there is one consideration which induces me to say that I have no particular attachment to the words that are stricken out and it is this: that put what provision you may in your constitutions as a declaration of your opinion in times of great excitement, and is not a practical limitation unless that opinion is ratified by the people. The gentleman (Mr. Brown) has said very truly, that in times of great excitement your paper constitutions do not stand in the way of an excited part of people. Still it may be right to put upon record, it may be right that the people that are to vote on this Constitution should record their sentiments, that such and such principles even in such times ought to govern the action of this Convention.

The gentleman from Doddridge, it seems to me, puts the matter entirely upon a false basis when he supposes that this clause is intended to confer on the legislature the power of limiting the convention. If it has been proposed to the people to call a convention for a particular purpose, if a proposition is made to the people that a convention shall be called for one object or two objects and that convention the people approve of, call the convention for such objects, are we to be told that that convention when assembled has unlimited powers? Have the people—the fountain from which all power flows—have they conferred—can you properly say they have conferred—upon that convention unlimited powers? Did the people ever confer upon the convention which assembled at Richmond the right to pass a secession ordinance? Did they intend to do it? Is it a correct doctrine that these conventions when assembled must necessarily have unlimited power? I say not, most decidedly not. They are called for such objects and such purposes as the people intended when they assented to the call.

MR. BROWN of Kanawha. Mr. President, I wish to say, sir, that I regard this as a very important section, indeed, and therefore must beg the indulgence of the Convention for the pertinacity with which I shall adhere to its provisions. I have considered this with some care and I am unable after an examination of it to see that I can propose anything better than this section contains as it stands. Whether we look to the right or to the left we will find difficulties but the real question is: on which side will we find the least? We have witnessed in these recent struggles evils resulting, I think from what I consider a fundamental error, and that error, I regret to say, I think is still lingering in the minds of not a few in this Convention. That is, that a convention once called by the people in pursuance of law is clothed with complete sovereignty to do as it pleases. There are a few fundamental principles, sir, that formed the basis and guide of my life in a political course as near as I am able to carry them out, and one is that all power is vested and originally was in the people, and from them alone derived. And another is that all officers and representatives are but the agents and the public servants of the people. Is it at all strange that he who has the unlimited power in himself to do as to him seems best and he chooses to appoint an agent that he is so stripped of power that he cannot control and guide and determine the conduct of that agent? Why, sir, the very possession of power unlimited in myself to appoint also includes the power to control and

restrain that agent in conformity to my will, not his; and it is to give him in the way-bill in which I gave him the appointment also the rule that is to guide his conduct, beyond which he shall not go. This Convention—men assembled in pursuance of the mandate of the law, by the order of the people, are as much the agents and public servants of the people, who alone are the sovereigns as is the delegate in the legislature controlled and trammeled by the constitutional provisions he has been sworn to support. And if the legislature, in pursuance of the law, have laid down and prescribed the way-bill, the powers that are to be conferred on this Convention—on these members of the Convention—that act of the legislature has given to these parties no powers whatever. It is only making the legislature an amanuensis to write down the way-bill which is to be ratified and confirmed by the people; and they see when they vote with their eyes open what powers they are delegating to these agents and are thereby enabled to determine whether they will place their powers in the hands of these agents or not, to be abused or used. You call a convention generally, and then having to go it blind, they give themselves to these home-made tyrants. For, sir, tyranny is as complete in the hands of untried men as in the hands of one emperor. I maintain, in the convention that has assembled, that has brought us into these difficulties now, one of the very evils we are suffering from is the fact that they disregarded and departed from the rule that is prescribed to them in their conduct. They were assembled for a specific purpose and have disregarded it and assumed all powers to do as they pleased—not only to override the wishes of the people but even the constitution. It was started in South Carolina and it has been asserted in every newspaper that has advocated secession, that when a convention has once assembled it is absolutely sovereign and even the people who elected it cannot control its action. I repudiate the doctrine. When the people elect a convention, its purpose is prescribed by law. The only authority appointed by the constitution to prescribe the powers of a convention is the legislature. It ought to be distinctly prescribed for what this Convention assembled; and if it is the intention of the people to have a convention with unlimited powers, why then they will say so in the law. If they do not choose to trust these people with these powers, they will say no at the polls.

There is another objection that strikes my mind. If you prescribe plainly, so that the people can understand when they vote for a convention or no convention what powers are to be delegated

to it, then they are more competent to decide, and then if that convention assumes to itself sovereignty and disregards those powers and does acts at war with delegated powers—in contravention of the directions of the people—why, sir, when you come back to the people and ask them to ratify it and affirm it, it can do as the Richmond convention did: well, sir, the Convention have adopted it and therefore it must be right and the people ought to yield to what their delegates have done. Now, sir, we can say, there is a specified power granted which they have violated and therefore they ought not to be regarded and trusted at all. That they have violated these powers is the strongest reason you can urge why you should not ratify and confirm the action of such faithless agents. It is for the security of the people, therefore, that you define specifically the powers you intend to delegate. And ever hereafter a free people will be cautious how they trust their rights and liberties in the hands of an irresponsible convention. It is putting everything at stake in the hands of a few men; and the only thing that has been reserved to us was to vote upon it when it came back; and then when they get the power into their hands they will give you no opportunity to vote as freemen. They will cover your land with soldiers from foreign states, and they will accomplish by unlawful means the ratification of their designs when they violated the trust reposed in them by the people. Let us therefore restrict them in declaring specifically what their powers shall be and if they violate them they will hold them accountable.

MR. VAN WINKLE. Gentlemen have felt themselves free to say that other gentlemen have mistaken this whole matter; and perhaps it may justify me in saying that some other gentlemen have mistaken this matter.

Now, sir, in reference to this question of secession, the convention that assembled at Richmond and which did the deed was authorized by the legislature to do it. The act of the legislature calling that convention authorized them to do whatever they might deem expedient for the safety and welfare of the state. The fullest and most unlimited power was placed in their hands by the legislature. So far, then, according to the doctrines that have been advanced here and embodied in this section, that convention was all right and had the power it exercised. But they failed in this, sir. The question of convention or no convention, never was submitted to the people. There was the first wrong step; and I say

that such a submission of the acts of that convention was nugatory. Suppose, however, that the question of convention or no convention, had been submitted to the people, and then the people had voted in favor of that convention? I ask whether that convention had not, so far as they could derive it from the legislature the right to commit the act of secession? Plainly they had, sir, but for this: the language of the compact, the language of the constitution denied the right of secession, and therefore the people themselves had not retained the power to secede except as a revolutionary measure; and every pretense that was set up in the convention at Richmond or any other of those states that they were doing a legal act, a constitutional act, that they were withdrawing from the Union under the constitution—all that, sir, is false and hollow pretense; and there is where the act of secession becomes an enormity. But if this section had been in operation in the State of Virginia at this time—with this simple exception, that the question of convention or no convention, was not submitted directly to the people. If the people elected delegates to that convention, with that single omission—if that had been there, then unless there was something in the Constitution of the United States itself to forbid secession, then secession was right. Or, rather, while it was not right, the power to do it was properly reposed, according to this section, in that convention. But then it would require another ratification, according to my doctrines.

But this is not a matter, in reference to the power of conventions, that is to be decided now—not a matter to be decided by our preconceived notions. It is settled if precedent can settle anything. We have our legislative and our executive to which we confide the administration of certain powers of the State, proclaiming everywhere, in the Constitution of the United States, and in the very language of the constitutions of the several states, that all other power is reserved to the states and to the people. And now how is the expression of the people to be had on these grave subjects? By a convention. It is the settled mode. It has the precedent of every State in the Union and of the United States itself, that conventions called for the purpose are those that are to exercise the reserved powers of the State and of the people. A convention, then, is called without restriction on its powers. It is called to deliberate on those matters which lie behind the legislation of the State. It is called to deliberate on those matters which are embraced in the constitution of the State. It is called to debate upon matters which are far higher and above all ordinary

legislation. And is a convention which meets in that way, without any distinct definition of its powers, by the act of the people themselves, to be so trammeled that it cannot perform the very act for which it was called? A state of things has arisen from which the people need relief. They are not to be trammeled by some legislative provision of the inferior body—a power that is against the very theory of a legislative body. They are to act in obedience to the written constitution. That is the doctrine on this side of the Atlantic, at all events; and the convention that is to assemble is to act over and above the constitution if the constitution itself gives any power. Always their acts are to be submitted to the people for ratification.

But I think the gentleman from Ohio is under a wrong impression also. He seems to think it will be simply set forth that this convention is to assemble for an amendment to the constitution or to perform the act of secession. That is not my understanding. If that was all, I do not know that I should object to it. But, sir, some person wants an additional circuit perhaps, and then the legislature calls a convention for the purpose of making an additional judicial circuit. The convention, clothed with the authority of the people, coming direct from the people, meet together; and although it may be represented to them that there are a hundred other evils existing that ought to be remedied they are confined to providing the additional circuit. That is what I object to. We do not want these conventions called every day. They are, of course, expensive. They take men away to attend the polls at extraordinary elections interfering to that extent with the ordinary pursuits of the people, and they should not be held every year or every five years if it could be avoided.

My doctrine is, therefore, that when this convention does come together, clothed with the authority of the people to look into the constitution to see whether it does not need amendment, that they shall be free to act within the scope of their powers; that they have power to recommend such amendments to the constitution as they may see fit, and the people can adopt or reject them at their pleasure. But my friend from Ohio must remember the people have not the right to propose amendments. Or if they have the right (as they have unquestionably) they have not the means of doing it. I mean the people in the country. They have that power and the means of exercising it through the instrumentality of a convention; and it is the only way in which they do have it. And, sir, what harm would ensue if when a convention is once called it

takes the whole subject into consideration. I have seen it where two successive legislatures in some states recommending an amendment, that amendment goes to the people to be voted on. That may be a way and convenient in some cases to provide for the assembling of a convention but it is a very slow way, and I do not know that it is a very efficient way. It might be well enough perhaps if some error had been committed by the representatives of the people in convention and had been equally promoted by the people themselves that there should be some way of proposing amendments to the constitution as is vested in the two houses of Congress and in some states is vested in the legislature. That might be well to guard against an oversight of that kind. But when a convention is clothed with the authority of the people it is contrary to every principle on which these bodies are organized, to all precedent in the history of this country, to the very nature of the case, that they should be confined to deliberating upon single amendments which happen to be picked out by the legislature for their action. Let them take up the whole subject and the necessity for a convention every two or three years will be obviated. There is not too much haste. Constitutions have been freely altered throughout the country, but few alterations have been radically or materially changed under at least twenty years. In the great progress that has been making in the science of legislation, as in all others, our material enlargement, such as railroads and other facilities, has no doubt required meetings of the people in convention oftener than would be required under other circumstances. These great inventions that the awakening of the nineteenth century has witnessed have made it necessary frequently to introduce provisions in the constitutions that were utterly unknown before. These great works of internal improvements have called for many restrictions in our Constitution to safeguard others that would have been unknown in the previous century. "We must keep pace with the times," as Jefferson said, and a few years of experience in reference to these matters are worth more than all the book learning ever made on the subject. I maintain, again, that when the people do assemble in convention by representatives directly from them they should be free to act within the proper limits of such bodies. Circumstances often do impose a limit even on conventions. They cannot be a tyrannical body when their acts are of no force until ratified by the people. The argument drawn from that consideration is a nullity here. No one proposes that a constitution be made by a convention is to go into operation until it has received

the sanction of the people. If the seceded states had dared at the time when they first seceded to submit their acts to the people of their states, it is doubtful whether one of them would have assented to it. If the act of secession had been fairly submitted to the people of Virginia—although I deny that we have any evidence that a majority did sustain it—I am very certain if it had been submitted and the people had been free to vote on the subject, that act never would have been sustained by the people of Virginia themselves. Sir, from the beginning it was a usurpation; it was a continued usurpation; it was intended as one; and those who framed the law which the members of the house of delegates voted for, with the exception of four members—I do not know how it was in the senate—but they voted to put in the hands of the convention the power to commit the act of secession if they had not been restrained by the Constitution of the United States. They were to do whatever they deemed expedient. Not, as in the case of the June convention, to do what the welfare of the people might require. Their powers were unlimited, and they cheated the people by refusing to submit the question to them in a proper form. Before that question was submitted they had sold us to the Confederate states; and while the legislative act required that everything they did relating to the fundamental law—the relations of the state—should be submitted to the people, they did not even pretend to submit that convention with the Confederate states to the people; and they simply declared that if the people voted in favor of secession they were understood to vote in favor of joining the Confederate states. It was just as great a cheat as the case of Kansas, to which the gentleman from Kanawha alluded.

I do think, sir, there is a principle lying at the bottom of this. When the people do assemble in these conventions, the mode in which the reserved powers of the people have always been expressed, that power above all others should be free to act in the premises as the good people may require it. We are controlled, and will be, by the Constitution of the United States, and what we have assented to there we cannot gain-say that. We cannot overthrow it. We cannot separate ourselves from it unless by revolution. And with that single restriction, when the people do meet in convention, they will have—for they cannot be deprived of it by legislative restrictions at all events—the power and will exercise it to do whatever may seem to them good. And I do most solemnly declare if I were elected a member of a convention with these restrictions placed upon me that I would not regard them

and would advise others to disregard them, believing them nugatory. That is my opinion, that any restriction placed on a body of that kind except by those who are the constituents of it would not be binding upon them. Certainly any one knows that unless the legislature was clothed by the constitution with power to restrict, they could not in the nature of things restrict such a body. But whether we could—as one gentleman here has observed, a Convention sitting here today representing the power and majesty of the people, have the right through a constitution or otherwise to bind another convention constituted precisely in the same manner is very doubtful. I know, sir, we hold that one session of a legislature cannot bind its successors. One session of any public body cannot bind its successors. Congress cannot; the legislature cannot do it. There is no act that the legislature can do within its constitutional power that the next legislature cannot repeal. And is it different in regard to this? Can one convention of equal power only bind another of equal power? To me the idea is preposterous; and therefore I am inclined to say that as I think even with such restrictions placed in the Constitution the subsequent convention would not be bound. There would be no authority there to bind it except one co-equal with its own. If one convention place their restrictions, the other convention having equal power, having the same constituency, coming together in the same way must have power to repeal what the former has done. Therefore I think that any restriction of this kind should be erased from this section, if I am right in my understanding of it, that they are not to prescribe the general scope of the Convention but to prescribe what amendments the new convention is to make. That is my understanding, that when the legislature passes an act calling a convention, it does prescribe the precise amendments which the convention is to consider; and then, as I have already hinted, when that act of the legislature is submitted to the people there is no means by which the people can say; we wish also another subject considered.

MR. LAMB. The gentleman from Wood, in showing the mistakes into which I have fallen, laid down this fact in regard to the Richmond convention, that so far as the act of the legislature was concerned which called that convention there was ample authority in that act for all the Richmond convention did. I think he will find—and, in fact, another part of his address admitted it—that he was wrong and I was right in this: that the act under which that

convention assembled did not authorize the action of the Richmond convention. There was certainly a provision in that act under which the Richmond convention was assembled that no action of theirs changing the relation of the state towards the Federal Government should be of any effect until it was submitted to and ratified by the people; and what did they do? Was their secession ordinance of any effect until it was submitted to and ratified by the people? No. One of the grossest and most outrageous acts of tyranny which that convention perpetrated was that they put that secession ordinance in force before it was ratified by the people and that they placed the people in a position in which they could not exercise their own free judgment in saying whether that action should bind them or not. Even upon the law of the legislature which called them together, they were guilty of a gross usurpation of power in a most essential particular. In defiance of the very law to which they owed their existence, they fastened by military force that secession ordinance and the laws of the Confederate states, so far as was in their power, upon the people of Virginia, making the provision in that law that secured the people the right to vote a mere mockery.

MR. VAN WINKLE. Will the gentleman permit me to say simply that I say the whole subject of secession—everything connected with it—was forbidden by the Constitution of the United States.

MR. LAMB. That is not what the gentleman said. He said the law under which that convention was called was sufficient of itself to authorize their acts. I say the law itself under which it was called was violated, as they violate every other principle of republican government.

MR. VAN WINKLE. I said it was sufficient provided they were not restrained by the Constitution of the United States.

MR. LAMB. I say, in addition to that, that they violated the very act under which they were called in its most essential particulars. There is a radical difference of principle in regard to this matter between the gentleman from Wood and me. The gentleman contends—and it is the principle on which his whole argument is based that a convention cannot be assembled but what it becomes vested at once with all the reserved powers of the people. This is the principle upon which he bases his whole argument. My principle is radically different. I say the people have the right to vest

in the convention what powers they please, as they can do in any other public agent. I say the convention is necessarily the agent of the people, the servant of the people, and vested with just such authority as the people have seen proper to confer upon them. It is not one convention pretending to bind another. It is the people who bind both. It is not a legislature pretending to bind a convention or to limit their powers. The act of the legislature that proposes a convention derives all its force from the vote of the people who approve of that act. It is nothing more than a mere proposition of the legislature until the people act upon it. If the people so act upon it as to authorize the call of a convention under that act, then that action becomes power of attorney to this agent, becomes the constitution, in fact, of this body, which is called under and in pursuance of it—their limit to the purpose and objects which are declared in that convention. If I supposed that the clause which is now under consideration was to operate in the way the gentleman from Wood represents that it will, I should be very willing to give up this clause. If the legislature are to frame a particular amendment to change a judicial district and then call a convention to act on that, do any of us contemplate that conventions will be called on such subjects? I suggested before and I think it will be necessary to adopt as a part of this Constitution some provision for making occasional amendments without resort to conventions. I have examined the constitutions of the different states in reference to that matter and I find in no less than twenty-seven out of the thirty-four they adopt some plan or other of obtaining occasional amendments without the necessity of resorting to conventions. The provision which was mentioned by the gentleman from Wood is a very common one that a particular amendment which it is desirable to make to the Constitution should be proposed by one legislature after a new election intervened and a new legislature is chosen by the people, the people having full notice that such amendment has been proposed and electing new members to each house with reference to that particular subject. Then a subsequent legislature acts upon it, and, if they approve it, it goes to the people for ratification at the next general election. Some provision of this kind it will be necessary to have in the Constitution; for I do not imagine we are going to make so perfect an instrument that it will not be necessary to amend it in some particulars. It is necessary to have some provision of that kind for another reason. These conventions ought to be reserved for great and pressing emergencies. They are not

the sort of a body to assemble for the purpose of considering whether a judicial district shall be altered. It is not for purposes of that kind that they should be called.

I must confess the greatest objection I have to see this section stricken out is that it may be regarded as expressing the sentiment of this Convention in favor of the doctrine that has been here advanced that no convention can be called unless it is *ipso facto* necessarily invested with all the reserved powers of the people. I do protest against that doctrine. I repudiate it entirely. It is the doctrine which has led us and the other states into secession. Had the convention at Richmond regarded even the act under which they were called, the people of the State of Virginia would have been secured at least a fair vote on the ordinance of secession if nothing else. But they held, and it was the current doctrine there that these conventions were unlimited; that they possessed, they represented, the sovereignty of the people. No, gentlemen, No! These conventions are like every other body that is elected by the people, and every officer that is elected by the people, they are the agents and servants of the people, invested with such authority and such authority only, as the people have conferred upon them.

I wish before I sit down to make an explanation of the section, which may be misunderstood. It proposes nothing but this—this is, in short, the effect of the section: That the legislature, by a majority of all the members elected to it, may propose to the people to call a convention, specifying the purposes for which that convention is to assemble, that that proposition has no further effect than to secure a vote upon it by the people; that if the people ratify it, then the convention is to assemble for the purpose, with the powers, which the people acting under that act have conferred upon them; and, further than this, that after they have assembled their ordinance must be submitted to the people for ratification. That is the simple object of the section.

MR. STUART of Doddridge. Mr. President, I do not want it understood by any means in the world, sir, that I look upon a convention as having supreme power. I want it distinctly understood that I hold that a convention is limited and controlled by the Constitution of the United States, and that all powers not denied to the people by the Constitution of the United States are held by the convention. Of course, we do not pretend to say that a convention called by the people, a state convention would have the

power to act in conflict with the Constitution of the United States. We deny that right.

MR. LAMB. Excuse me one moment. I did not suppose the gentleman did advocate that doctrine, nor did I say he did.

MR. STUART of Doddridge. Yes, sir.

MR. LAMB. The Constitution of the United States itself says that the powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or to the people. But I did suppose the gentleman was contending for this doctrine that all these reserved rights of the people—the whole sovereignty which the people have under the Constitution of the United States—is necessarily conferred upon the convention. That doctrine I deny.

MR. STUART of Doddridge. It is not necessary to bring up the ordinance of secession passed by the Richmond convention last winter as an argument against striking out these words. Because it was not entertained there even by a majority of the Richmond convention that they had the right of secession but exercised it as a revolutionary measure. And we can do nothing here in the world that would restrict the people in exercising what they call their revolutionary rights. It makes no difference what kind of a constitution we frame—whether we say the power shall be distinctly declared by the legislature to call a convention or not—when that convention assemble, we can do nothing here in the world if they propose to take upon themselves revolutionary rights, because that is a power above all other if they choose to exercise it. There is no necessity of trying to legislate against a matter of that kind. There could have been no danger had the convention at Richmond last winter respected the provisions of the constitution of 1850-1. That would have prevented them doing what they did. They exercised what they called their revolutionary rights and took the power into their own hands, disregarding the will of the people.

But I want to avoid this difficulty, declaring distinctly the powers and objects of such convention. If the legislature sees proper to submit the question to the people whether they will have a convention for some particular purpose that we do not want, the people shall be confined simply to the action of the legislature. Then the people cannot have a convention unless it is restricted and confined to certain powers that the legislature may see cause to present to them. There would be no way by which the people

could have a call for the convention if we adopt this only by the legislature restricting and defining what powers it may exercise. They cannot get it. The people may want other amendments to the constitution. That would be defined by the legislature. They could not do it if the legislature sees fit to restrict the people, if it is the option with them to do; that it is the people who have the right to say what they want done, and if they want to call a convention their delegates know what the people want and they will conform to it and not be restricted by any legislative action on the subject. There is no power of calling a convention at all if the legislature has to define and restrict it. Let the legislature do it. Let the legislature adopt it if they have the framing and forming of the acts of the convention, why not give them the power at once? There is no propriety in calling a convention. I cannot see the object and purpose of it, calling a body here who are restricted and confined and whose labors are pointed out and whose acts are to be confined to the action of the legislature. Give us the power to complete the work when we are collected together.

MR. POMEROY. I am in favor of the motion of the gentleman from Doddridge to strike out this clause because the clause is unnecessary. No practical benefit is to be derived from it. I concur with the gentleman who has just taken his seat that if the legislature is to define all the objects and all the powers of the convention that is afterwards to assemble, why not go on and do the business themselves? If they know exactly all the amendments that ought to be made to the constitution—what the desire and wish of the people is—why trouble the people with voting for new men and voting upon the subject of whether they will call a convention or not. If they know all these affairs, why not transact the business themselves? Then besides, I imagine that with all the wisdom that may be found embodied in the legislature at a particular time, when they pass this act calling and specifying that there shall be a convention at a certain time, how do they know of the questions that the people may wish acted on months afterwards? It provides that some three months after the act shall pass the vote of the people shall be taken. How many evils among the people in the different counties labor under, would these members of the legislature be aware of at the time they pass this act? The question of a convention has not been agitated and brought before them in the way that you can determine what the wishes of the people are at that particular time. And after the

act is passed and the people begin to look into their old constitution to see what amendments they wish made. And therefore I believe that the convention is the people assembled. Not all the people in the mass, because that would not be convenient, but they have delegated to the members of the Convention the powers that belong to the people themselves. They come up there. Why should they not have power to take up any legitimate subject that may come before them? Not to violate the Constitution of the United States, which is the supreme law of the land and which we ought to recognize as such, and do, and which all men ought to that live under this Constitution. But to adopt such amendments as the people may demand at their hands. And they will be held responsible by the people. And I believe these powers ought to be lodged in the convention itself and not in the hands of the legislature. And, therefore, without making any lengthy remarks—for I think the subject has been very fully—I might say without any flattery, very ably —discussed, why I am in favor of striking this clause out; and I would indicate that I wish the yeas and nays on this question when it is taken.

MR. PAXTON. It appears to me the question we are called to decide by the motion of the gentleman from Doddridge, to strike out, is a very simple and plain one. It is merely whether the people in calling a convention—because conventions are called by the people and not by the legislature —whether the people in calling a convention have the right to restrict that convention; or whether in the language of the clause itself, they have the right to declare distinctly what powers and for what objects such convention when called shall exercise and act on; or whether, on the other hand, in calling a convention, they surrender entirely their sovereignty into the hands of that body—create, in fact, a body of despots; because that is what they are when the entire sovereignty is surrendered into their hands. Viewing the question in that light, I cannot hesitate a moment as to my vote on that question. I cannot believe the members of this Convention can hesitate in regard to it. I hope it will by an overwhelming vote repudiate the principle which at least seems to be implied by the motion to strike out this part of the section.

MR. HERVEY. I shall vote to strike out. I have prepared a proposition identical with that proposition now under consideration. The gentleman from Ohio seems to be afraid of despots and despotisms. That is what I propose to avoid; what is proposed

to be avoided by the amendment of the gentleman from Doddridge. I maintain that by this proposition the people have merely a negative vote. They have no affirmative vote as to originating propositions. The legislature makes propositions. They are submitted to the people. If the people condemn those propositions, what then? Nothing else. Wait for another little budget of papers from the legislature. I am decidedly in favor of striking out. I am in favor of this power remaining where it is and where it ought to be, with the people themselves, and not delegating it to the legislature and thereby incorporating in one body both powers of legislation and power to make a constitution. I maintain that if this provision is retained the people of the State have merely a negative vote; not a positive or affirmative vote. I shall vote to strike out.

MR. STEVENSON of Wood. Mr. President, I wish to add a very few remarks in reference to one portion of this subject which I think has not been so much spoken of as the subject in general. I may say first, sir, that I regard the provision as it reads as a very wholesome one, and shall vote against the amendment of the gentleman from Doddridge to strike it out. I was in favor of restricting the legislature even beyond the restriction in the section here on this very subject; and I am now in favor of limiting any convention that may be called by the legislature upon any subject, or at least upon some subjects upon which they may be called to act. The idea is conveyed by remarks which have been made that the convention, if this provision is retained, will be necessarily restricted and unable to act as the necessities and public interests of the time might seem to indicate or require. I think that is a mistake; because although the convention thus called by the legislature or proposed to be called by it, although limited, may be said notwithstanding that limit to have almost an unlimited power if the legislature see proper to give it to them. The legislature—if I understand this properly—are to declare distinctly the powers and objects of such convention. If there are great questions at that time in which the public are interested or which public safety may require, the electors to act upon, is it not clear the legislature can give the convention power to act on all such questions; upon any number of questions; upon every question in which the public of the State may be interested at the time that convention is called? I say even if this provision is retained the convention may have almost unlimited power to act on these ques-

tions. Hence I am in favor of retaining this restriction. It does not prevent the legitimate and proper and ample action of any convention which may hereafter be called to take into consideration the interests of the people of this State. I think it right, judicious and safe to put some restriction on any convention which may hereafter be called to consider such matters; and I cannot think of any provision that meets the need so well as the section just as it reads. For that reason, I shall vote against striking out.

MR. VAN WINKLE. I would ask the indulgence of the Convention, not to re-argue this question but simply to put myself right. I speak hurriedly and do not always perhaps say what I intend to. How that may be I do not know. I do not suppose any gentleman here would state what I did say except as he understood it. But I wanted to be understood as saying that setting aside the restraints of the Constitution of the United States—which was the great sin of the Richmond convention—the great sin of secession—that the power vested in them by the legislature was entirely sufficient authority to pass the ordinance of secession. That I stated, sir, and I now add that it was also sufficient authority for them to make war. I wanted to show there that the legislature had committed the first error—and a great one—by giving to that convention the power—or pretending to give it—for really they could not—to do whatever they might deem expedient with the full understanding that the question of secession was to come up; and upon the existing relations between the United States and some of those now revolted states, any fair interpretation of the power vested in that body by the legislature would authorize them to pass the ordinance of secession, setting aside, of course, the Constitution of the United States, and would authorize them safety of the state, as they conceived it, to open the ball of war.

I have to regret that that act of the legislature calling that convention met with but four negatives in the house of delegates, and one of them, I think was from my county.

There is another point which I can correct from reference to the remarks of the gentleman from Ohio (Mr. Lamb). I never contended the people were to place their reserved powers in the hands of the convention. I never said that. I never thought of it. I mean to say I did not mean to say it. I am a Dutchman and have a right to speak twice. The whole scope of my argument will show that I did not mean it. I meant to say the convention is the instrument by which the people of the state exercise their reserved

power. This is outside of ordinary legislation the only instrument by which they can exercise it. While, therefore, I wish no restriction except those the people may directly impose be placed in this instrument in advance, when a convention assembles and is the instrument of the people in reference to those and after some years another convention assembles with the same powers and authority derived from precisely the same source to determine what is the matter, is to be trammeled by the action of the former; and that I say contradicts a well-known principle in reference to legislative or deliberative bodies, that one cannot of itself, of its own authority, bind its successors.

MR. LAMB. I do not intend to reargue the question. I only want to make an explanation. I am willing myself to accept the gentleman's principle as he has now qualified it, that the convention possesses the reserved powers of the people, subject to such restrictions as the people themselves may impose on that convention. That I suppose is pretty near the correct principle. Now, how are the people to restrict the convention? How is it possible for the people to act on such subjects except just in the way that is pointed out by this provision? Is there any other possible way in which the people can act on a matter of that kind? Except by having a proposition submitted to them by the legislature—their own agents; their own servants; for the legislature is so, and we presume it represents, in some degree, at least, the wishes of the people—by having a proposition submitted to them by that body which they can confirm or reject? Is there any other possible mode in which the action of the people can be had in reference to questions of that kind? The gentleman from Brooke is willing also, I suppose, to admit the doctrine that the people may restrict these conventions; that they do not necessarily as soon as they are assembled possess themselves of all the reserved rights of the people and become, as was correctly said an assembly of despots, invested with unlimited despotism, according to the doctrine here contended for.

MR. VAN WINKLE. I would call the gentleman's attention to the fact that the people must ratify what the convention has done. That is what I have insisted on myself, and that is where the people save themselves.

MR. LAMB. Certainly, the people must ratify what the convention has done, and this is to be the great protection for the peo-

ple! How was it in reference to the ratification in the case of the Richmond convention? Did not we reserve the right to ratify the acts of that convention? Did not we tell that convention their acts should have no effect until they were ratified by the people? We need some further protection than that. Other conventions may act as they acted and render the ratification a mere fraud upon us. I would ask the gentleman from Brooke who says he is not willing to consent to any restriction on these bodies except what the people propose, what other plan he can devise for the people when they wish to restrict the powers of these conventions than to have a proposition to that effect submitted to vote at an election to approve or reject? Can you assemble the people all together in this hall, or any hall, to discuss these matters, to hear this thing and that thing suggested?

MR. HERVEY. I merely wish to prevent the legislature from originating these propositions alone.

MR. LAMB. Who alone ever can originate them? How alone is the matter ever to be submitted to the people for action? Will your governor originate them and submit them? Or will you wait until you can assemble the people all together to discuss the matter and hear amendments proposed and questions of order raised in an assemblage of millions of men? There is no other mode in which the people can act. The propositions must be prepared by their servants and agents. We must not assume that the legislature, if the people want a convention assembled with such and such powers will necessarily set themselves against the will of the people in that respect. They are the servants of the people, elected by the people, elected annually. They will act, and they will submit such matters to the people unquestionably as the people desire to have submitted to them; and it is the only way in which the sense of the people can ever be had in regard to such questions.

The Chair stated the question was on the amendment offered by the gentleman from Doddridge, to strike out the words: "declare distinctly the powers and objects of such convention."

MR. SOPER. I would suggest to the gentleman to modify his motion so as to strike out only the words "powers and" so the clause would read "declare distinctly the objects of the convention."

MR. STUART of Doddridge. I would rather test the sense of the Convention.

MR. SOPER. I then move to amend the gentleman's motion as indicated. The necessity of it is this: We have been entertained here this morning, very much indeed myself, by the discussion; but I apprehend that nothing which has taken place heretofore can be embraced within the object of this section. The object here is to amend the Constitution. Beyond that no power can be conferred upon any convention which will be called in pursuance of this section. But to enable the people to vote intelligently on the subject it is necessary that the legislature should designate generally the necessity or the object for which they are to call this convention. It appears to me they cannot vote understandingly until these objects are plainly put before them; and when the legislature put the objects plainly before them showing the necessity of a revision of the Constitution, its alteration, the people then will elect delegates with that view. But, sir, I am opposed to any restrictions in that law to those particular objects. Those objects of necessity will be included within the powers delegated to the convention; but if in the wisdom of the convention, or of the people, it should become necessary to add or to make some other alterations not authorized by the legislature at the time of calling the convention, I want that convention clothed with the power to remedy those defects. And I apprehend that what we have heard here in relation to the dangers of this Convention assuming unlimited powers, I do not myself apprehend anything of that kind. I think it myself beyond a probability. A convention coming directly from the people whose attention has been called to the object by a previous act of the legislature, and it having reference to altering the organic law of the State, it does appear to me that gentlemen elected to a convention under such circumstances will come here expressly for the purpose of carrying out the views of their constituents; and no radical act or nothing directly in opposition to their wishes will be enacted by this Convention.

If the convention is to be restricted to the alterations prescribed by the legislature, it will be said that they will be restricted in the very language of the act and they will not be permitted to alter even its phraseology or its meaning in any respect. It appears to me you are incurring here an extraordinary expense upon the people for no very particular object. No necessity. We had better adopt at once the proposition to let the people vote directly upon the proposition of the legislature, whether they will have it or not. There is no necessity of calling a convention to come up here if the legislature propose to alter the constitution and designates in what

way and to what extent and for what purpose it shall be altered. There is no necessity of having the people go to the expense of assembling a convention to merely reiterate their own desire on that subject. Because the very instant they say there is not a necessity for a convention they adopt the proposition proposed by the legislature—the people do. But if that convention are to come, carrying out mainly the great object avowed in the law with the power of making such alterations and additions as in their judgment may be necessary and beneficial to the people, why they ought to have that authority. Then what would be the necessity for calling a convention? I am satisfied that no convention will be called for the purpose of amending this Constitution unless it be for very important changes; and if, as suggested by the gentleman from Ohio, he has in contemplation preparing an amendment or authority be given to the legislature to propose one or more amendments to the people for ratification under such restrictions as will enable the people to get a free and unbiased expression of the wishes of the people as to the necessity of that amendment—if he proposes such a clause in the Constitution it will answer, I apprehend, all the necessities that may grow out of such errors or omissions as we here shall give ground for in the Constitution we are about to adopt here, and will attain the object in that way. For instance, it has been stated here that there are some twenty-odd states of the Union which have got provisions of that kind in their constitutions; and I would now like to see something like this: let a distinct amendment be proposed by the legislature. Now, if it is not to be sent down and considered by the people at the next election, they not only will delegate their delegates with a view to that amendment, and if at the second or next succeeding session of the legislature they should adopt the same amendment, let it then be submitted to the people and become a law.

MR. LAMB. That is precisely the amendment I propose to offer as an additional section.

MR. SOPER. I should like to see a section of that kind, and then I would vote for the section now under consideration declaring distinctly the objects to the people. But when they call a convention under this section I want them clothed with all the power necessary in order to remedy defects that may be discovered in the Constitution. I apprehend there is no danger here of a convention undertaking to take away the rights of the people. If they should do it, the inherent power which rests in the people on all occasions, which

has been exercised here in the reorganization of the government of this State, the people would rise up in their majesty and hurl those members of the convention out of their midst and repudiate entirely their acts and set up a republican form of government such as they would desire to have. I shall be compelled to vote for the amendment, if my amendment is lost, of the gentlemen from Doddridge, but I prefer my motion. I want it to read "declare the objects" omitting the word "distinctly" also.

MR. PAXTON. Gentlemen appear to discuss this question here as if the adoption of this proposition would operate at once as an absolute restriction on any convention. It is nothing more than simply retaining in the hands of the people the power to impose such restrictions as they please. If they choose to delegate all the power to a convention at that time, they can do so. But it is nothing more than retaining the power to impose such restrictions at the time when a convention may be called. Merely retaining in the hands of the people the power to surrender their entire sovereignty to them or to reserve whatever they may in their judgment think best. That is the whole question.

MR. SOPER. The difficulty between the gentleman and myself is this: If I understand him, he thinks the people have got to reserve to themselves the power of conferring upon the convention all power; that they are not restricted by law. Now, I do not understand it so. That is the object I want to attain. I want them to come clothed with all the powers expressed in the law; but if it be necessary to alter in their judgment in some respect I want them to have that power. If it be necessary to add an additional amendment to the Constitution, I want them to have that power. But I think, after all, it will be but an amendment to the Constitution and then it is very well guarded hereafter; must come back for the ratification of the people; and here are very strong words to show that there shall be no shift or device to frustrate the objects and desires of the people in relation to it. They will have the controlling vote upon it after it comes back; and this Convention will have no power to take it away from the people—their subsequent ratification of it, nor give it any effect until after the people have ratified it. Now, if this law declares distinctly the power of the convention and if the convention shall be ordered for the purpose with the power set forth in such law, I apprehend they cannot go out of them; they are tied up. The amendment that I propose requires the law to set forth the objects or in other words the necessities of the con-

vention, so that the people may act intelligently on the subject. If the people thereafter should call the convention, that that convention shall carry out substantially the objects for which the people have elected them, submitting their acts afterwards for ratification before they can have any effect.

MR. LAMB. Mr. President, I imagine the construction of the section given by my colleague from Ohio (Mr. Paxton) is strictly correct; the effect of the section and nothing else. If the people want a convention assembled for the purpose of amending the Constitution and the law is passed calling a convention for that object, which the people ratify, I take it that is declaring distinctly the power and objects of that convention. Or the convention perhaps might be called—though I know of no example of that kind —for the purpose of amending the Constitution in a single particular, say relating to the legislative department. That would be distinctly defining the powers and objects of the convention; and that may be ratified. Then still, if the people wish it, they have the power of calling a convention with unlimited powers. But it leaves in the hands of the people the power of restricting these conventions as to them may seem proper according to the emergency of the time. Such, I take it, is exactly the effect; and it cannot be misconstrued under operation of the provision as it now stands. It seems to have been discussed, however, throughout by the parties who are opposed to it as if it would require the power of the convention to be limited to making some special trifling amendments. It imposes no such limitation whatever. If the people see proper to ratify it, the convention can be called under this section possessing all the powers reserved to the people under the Constitution of the United States; but it can be called for such other and distinct objects as the people may desire. For I take it for granted that whenever the people do desire a convention to be called, whether for an object where they are possessed of all power or for a distinct object needing only limited authority, if one legislature will not do it they will turn that legislature out and put in another that will. For it is their will, from the beginning to the end, that is to govern in this matter, and not at all the action of their own servants, men under their control, which is to initiate it, simply because it cannot be brought forward in any other manner. After the proposition is made by the legislature, they will have the right to vote direct on the question whether a convention shall be called or not. It is simply reserving the power, if the people see

proper to do it, to call a convention for particular purposes. At the same time they have the same power under it—and must have —of calling a convention if they see proper, with unlimited powers.

THE PRESIDENT. The Chair would take this occasion to call the attention of the Convention to the fact that in the consideration of the amendment to the amendment the discussion should be limited, while gentlemen are traversing the whole question. Gentlemen will confine themselves to that amendment.

MR. LAMB. I must apologize to the Chair and to the Convention. I know I have overgone my privileges on this occasion, but I don't do it very often. The general subject was introduced as soon as the amendment was offered. It was not introduced by me. I made no remarks on the general matter except in reply to previous remarks of that character.

MR. STUART of Doddridge. The hour of recess has arrived, sir.

MR. VAN WINKLE. I cannot conceive the propriety of making an amendment without discussing the whole subject. It may be that amendments might be proposed that are not of that character; but when I go to show why a thing should be stricken out, I must go into the whole subject.

THE PRESIDENT. The hour for recess having arrived, the Convention will take a recess.

* * * * *

THURSDAY, JANUARY 9, 1862.

On reassembling, the President in the chair:

MR. STUART of Doddridge. Mr. President, I rise to know if we cannot have a division of the question in some way. I want to vote for the amendment of the gentleman from Tyler; but in voting for his amendment, if it is adopted I am precluded from voting to strike out the residue, and the friends of striking out are left in rather a peculiar situation.

THE PRESIDENT. The Chair is of the opinion that it would be competent to vote for the amendment of the gentleman from Tyler and afterwards to vote to strike out the whole.

MR. STUART. I think not.

THE PRESIDENT. That would be the opinion of the Chair.

MR. VAN WINKLE. The amendment of the gentleman from Tyler is a substitute for the amendment of the gentleman from Doddridge; and if it is adopted, the amendment offered by the gentleman from Doddridge falls. He offers to amend it by making a different proposition.

MR. STUART of Doddridge. I do not understand the gentleman from Wood.

MR. VAN WINKLE. I say the proposition of the gentleman from Tyler is a substitute for yours.

MR. STUART of Doddridge. If we vote for the substitute, we will not have the privilege of voting for the amendment; and I want to know if we cannot divide the question in some way so that we can have a vote upon striking out the whole.

MR. VAN WINKLE. The way to do would be to withhold the amendment of the gentleman from Tyler until this is tried.

MR. SOPER. I will do so. Mr. President, I withdraw it for the present.

MR. PAXTON asked for the yeas and nays. They were taken and resulted as follows:

YEAS—Messrs. Hall of Mason (President), Brumfield, Chapman, Caldwell, Dering, Dolly, Hansley, Hervey, Irvine, Montague, Mahon, Powell, Pomeroy, Robinson, Ruffner, Stephenson of Clay, Stewart of Wirt, Sheets, Stuart of Doddridge, Taylor, Trainer, Van Winkle, Warder and Wilson—23.

NAYS—Messrs. Brown of Preston, Haymond, Harrison, Hubbs, Lamb, Paxton, Sinsel, Simmons, Stevenson of Wood, and Soper —10.

So the amendment to strike out was adopted; and the question recurring on the section as amended, it was agreed to.

MR. LAMB. Mr. President, I rise to offer an additional provision in regard to amendments. Let us take what care we may in regard to this subject, undoubtedly the Constitution which we shall propose will be liable to many defects. It is almost necessarily the case, I may say, for no man and no set of men can pretend to foresee the emergencies which may arise in the life time of a nation and to adopt beforehand an adequate provision for these emer-

gencies. And this is the task which is undertaken in the formation of a constitution, intended at least when it is formed by the convention and ratified by the people to be a permanent instrument. I am so sensible that however carefully we may frame our work it will have many defects that I wish to see a reasonable facility granted for the purpose of amending any errors which in our blindness we may commit. It belongs to Omniscience alone to see all the emergencies, all the trials in the future to which a constitution is to be subjected. Ours will certainly be subject to a severe test. It will take its existence in a time of trouble and of danger, not as the constitutions which have ordinarily been framed and adopted by this people to operate upon a people peaceable and prosperous; but everything will tend to subject our work to the severest test. Let us at least then, while we admit that with our want of experience, want of ability, perhaps, for the task we may commit many oversights and errors on our work—let us at least have it to say that if we present a work of that character to the people, they may at least have a reasonable facility in making amendments. The gentleman from Kanawha, (Mr. Brown), who announced this morning that we need not expect his influence in favor of the new Constitution, I want him to go to his constituents and to be able to say that if there is error in the Constitution it can be readily and without difficulty amended. I want these facilities for amendments to exist without calling upon these tremendous engines, the national conventions, which according to the decision of this body are to possess when called upon the whole reserved rights of the people. I want no convention assembled where this doctrine is maintained in this land.

I have examined with reference to this subject with some care the provisions of the different constitutions. I find, as I stated this morning, that the constitutions of no less than twenty-seven states provide, in one shape or another, for amendments without calling upon conventions to exercise the power. The constitutions of sixteen states have some provision or other on the subject of conventions. The plan which seems to be most generally preferred throughout the different states in reference to amendments is that which has been already spoken of by the gentleman from Tyler and the gentleman from Wood. They allow the legislature, in the first place, to propose amendments, provided the majority of all the members elected to each house concur in making the proposition. Then a general election is to intervene, a new legislature is to be chosen; the proposed amendment stands referred to that legis-

lature; it is to be published from three to six months before the election at which that legislature is to be re-elected. The people elect the new houses with special reference to these amendments—at least know that such subjects will go before the succeeding legislature. When after a new election is had, the attention of the people being directed thus plainly to the amendments which are proposed, a majority of all the members of each branch is required again for the purpose of acting on the amendment previously proposed. If in the second legislature the amendment receives the concurrence of a majority of all the members of each branch, then provision must be made for submitting them to the popular vote, and they receive their sanction and vitality at last only from the vote of the people. The object of this is apparent. It is, as embodied in the Declaration of Independence, that our systems of government shall not be changed for "light and transient causes." It is to secure to us the great safety that if our fundamental systems are to be changed, at least they will be changed by the deliberate will of the people. This is in conformity with republican principle, because a majority of the people will have the power to change them—not two-thirds. If we say that an amendment cannot be proposed unless by two-thirds of the legislature, that proposition has a converse to it. It is in substance saying that when the legislature representing one-third of the people and supposed to express the will of one-third of the people may prevent amendments. I will submit for the consideration of the Convention the following as an additional section:

Any amendment to the Constitution of the State may be proposed in either branch of the legislature; and if the same, being read on three several days in each branch, be agreed to, on its third reading, by a majority of the members elected thereto, the proposed amendment, with the yeas and nays thereon, shall be entered on the journals, and referred to the legislature at the first session to be held after the next general election; and shall be published, at least three months before such election, in some newspaper in every county in which a newspaper is printed. And if the proposed amendment be agreed to, during such session, by a majority of the members elected to each branch, it shall be the duty of the legislature to provide by law for submitting the same to the voters of the State for ratification or rejection. And if a majority of the qualified voters, voting upon the question at the polls held pursuant to such law, ratify the proposed amendment, it shall be in force from the time of such ratification, as part of the Constitution of the State.

If two or more amendments be submitted at the same time to the voters of the State, they shall be submitted in such manner that

the vote on the ratification or rejection thereof shall be taken on each of the proposed amendments separately.

I will say that there is nothing in this that is new. It is a provision substantially as contained in the constitutions of several states. I ought perhaps to remark that there are other plans proposed in the constitutions of different states for the purpose of amending the constitution with reference to a convention. Some of the states have adopted this plan. They allow two-thirds of each house to propose amendments. That amendment lies over—published, of course, so as to give general information to the people—until after another legislature is elected, that legislature being supposed to be elected with reference to the amendment proposed. If two-thirds of that legislature adopt the proposed amendment, it then becomes part of the constitution without any direct vote of the people. That is one plan.

Another plan is that two-thirds of each House are allowed to propose amendments, those amendments being published for the information of the people, and a vote is taken upon them at the next general election. If then ratified by the popular vote, they become part of the constitution. I have my doubts, however, whether any principle that requires two-thirds of the house to act in reference to a matter of this kind is proper, for it is virtually saying that one-third of the State may prevent any amendment to the Constitution.

There is much the largest number of the states, however, requiring the amendments proposed to pass two successive legislatures before they are submitted.

THE PRESIDENT. What disposition did the gentleman from Ohio propose to make of the section he offered?

MR. LAMB. I have no objection at all to laying it on the table if the Convention wish to have the amendment before them some time before acting on it. Just as the Convention please in reference to that matter.

MR. STUART of Doddridge. I was going to suggest it had better be laid on the table.

MR. VAN WINKLE. And be printed.

MR. LAMB. Very well, sir; I will make that motion then.

MR. HARRISON. Mr. President, I ask leave to call the attention of the Convention to a proposition (No. 33) offered by my colleague some time ago. I suppose it is proper now for the Convention to take action upon it. I will read the proposition for the information of the Convention:

WHEREAS, When the legislatures of some of the states have made laws restraining or forbidding the sale of intoxicating liquors, the courts have decided that such legislation was unconstitutional.

THEREFORE, RESOLVED, That the Committee on the Legislative Department be requested to take into consideration the propriety of inserting the following, or some similar provision in the Constitution:

The legislature may make laws regulating or prohibiting the sale of intoxicating liquors within the limits of this Commonwealth, or in any of the counties thereof, or in any corporation within the State, when such legislation is demanded by the citizens thereof; and the legislature may submit such laws to the people of the State, county or corporation, as the case may be, for their ratification or rejection, at the ballot box.

I am in favor of the substance of this proposition being incorporated in the Constitution for the reason assigned in the preamble. The form of it perhaps is not such as I would desire. I suppose it is in order.

THE PRESIDENT. I would suggest that the report is under consideration now, and perhaps it would be most proper to move to pass by the report on the legislative department.

MR. HARRISON. I thought we were about through with that.

MR. LAMB. The proposition mentioned by the gentleman from Harrison was under consideration in the Committee on the Legislative Department. The members will recall that it was decided inexpedient to report any provision of the kind. I believe that was the fact. If the gentleman wants a report to act upon, we will consider that as part of the report of the Legislative Committee.

MR. HARRISON. I suppose, of course, the committee had the matter under investigation but thought it inexpedient; but some members of the committee may differ with the committee, as they have an undoubted right to do, as to the expediency of that matter; and with a view of testing it I will offer this as an additional clause to the legislative powers:

"The legislature may make laws regulating or prohibiting the sale of intoxicating liquors within the limits of this Commonwealth, or in any of the counties thereof, or in any corporation within the State."

If it is the pleasure of the Convention to take it up now, perhaps it may as well be done now as any other time.

THE PRESIDENT. The question will be on the adoption of the proposition of the gentleman from Harrison.

MR. HARRISON. It seems to me, for the reason assigned in the preamble to this proposition, that it would be eminently proper for us to provide in our Constitution for a settlement of the constitutional right. It seems that in some of the states heretofore, as the members are aware the legislature has undertaken to regulate the sale and manufacture, and use perhaps, of intoxicating liquors; and the question of the constitutional right of the legislature to pass any such law has been raised and it seems decided against the constitutionality of such acts. It is not necessary that I should say anything this afternoon about the evils of intemperance, I suppose. They are countless—innumerable—and it seems to me in a body forming a constitution, or in a legislature making laws, that with so great an evil as this staring everyone in the face, there can be no objection on the part of any one to authorizing the legislature at least to pass such laws if they think proper.

We have in this report a provision that the legislature may authorize the courts to grant divorces. I do not understand exactly the object of such a clause unless it be to remove some such objection as might be raised to a law of this kind. It seems to me it will do no harm even if it were a useless waste of words to insert a clause like this in this Constitution. If it should be the wish of the body of the people and the will of the legislature to make such laws hereafter, the question which has destroyed the effect of them in some states where they have been passed will be removed by our action here now; and I hope it may be the pleasure of the Convention to insert such a provision in this Constitution.

MR. LAMB. Mr. President, I think the motion of the gentleman from Harrison is entirely unnecessary even to accomplish his own object. We have adopted the first section of this report which provides that the legislative power of this State shall be divided in a senate and house of delegates. If it is necessary to adopt any regulation by law in regard to the sale and use of ardent

spirits, the legislature have full power to do so unless there is something in the Constitution to prohibit their action on that subject. I do not see, therefore, that even if the legislation which the gentleman speaks of is desirable that there is any necessity for the motion he has made.

MR. HARRISON. It has been suggested that as the question was offered some time ago and the question was not then called to the attention of the house before, perhaps it would be best to offer this as a resolution to be adopted in this report and let it lie on the table until some future day until we dispose of some other parts of this report, when it can be called up again. I have no objection to its taking such a course as that.

MR. STUART of Doddridge. Offer it as a section of the report.

MR. HARRISON. If there is no objection, I ask that it be laid on the table and I will call it up again.

MR. POMEROY. I hope we will go back to the second section of the report on the legislative department, where we are likely to have a considerable discussion. I suppose we are prepared now to enter on that matter. I move to go back and take up the second section; and to bring the matter before the house, I move the section be adopted.

MR. CALDWELL. I hope my friend from Hancock will withdraw his motion a moment. I hold in my hands propositions for additional sections to this report and ask that they be laid on the table and printed.

MR. POMEROY. Certainly I will do that.

MR. RUFFNER (in the chair). Does the gentleman wish them read at this time?

MR. CALDWELL. I am not particular about it.

MR. STUART of Doddridge. I would like to have them read.

The Secretary read as follows:

The legislature shall pass no special act conferring corporate powers, other than for banking or for municipal purposes, or when the object cannot be attained under general laws; provided that the power of municipal corporations to tax and incur debts may be restricted by law.

Corporations, other than corporations for banking or for municipal purposes, shall be formed under general laws, but all general

laws passed pursuant to this section may be altered or amended by the legislature from time to time.

The property of corporations created under general laws shall be subject to taxation the same as the property of individuals.

The right of way may be granted by general laws to corporations, provided the same shall not be appropriated to the use of any incorporation until full compensation therefor be made in money—the amount of compensation to be ascertained in a court of record, in such a manner as shall be prescribed by law.

MR. POMEROY. I renew my motion to take up the second section.

The motion was agreed to and the section taken up and read by the Secretary as follows:

"2. The senate shall be composed of eighteen and the house of delegates of forty-six members. The term of office for senators shall be three years and that of delegates one year, commencing, in each case, on the first day of October next succeeding their election. The regular elections for members of the legislature shall be held on the fourth Thursday of May. But vacancies in either branch shall be filled by election, for the unexpired term in such manner as shall be prescribed by law."

MR. POMEROY. My understanding at this time is that all the clauses of this section were acted on except the first. We acted on the first, also the third. A motion was made to change the time of election, to change the term of senators from three years to two. The matter that would come before us would simply be the first clause: "The senate shall be composed of eighteen and the house of delegates of forty-six members."

MR. LAMB. I do not know whether this statement is exactly correct or not. We acted on the other three clauses and adopted certain amendments to them. I do not think the clauses were adopted.

MR. POMEROY. That is correct—simply amended them.

MR. RUFFNER (in the chair). The whole section then is now open to amendment. If there be no amendments proposed, the question will be on adopting the section.

MR. VAN WINKLE. I move to strike out "forty-six" in the second line and insert "fifty-four." My reasons are: In the first place, I do not think the house as large as it should be even if the valley counties come in at the same rate. That would make it fifty-five. But the stronger reason is this: The small number of

delegates owing to the peculiar numbers of the population of the different counties the way they have arranged themselves is, I think, too small to make an equitable distribution of them. That is to say, it leaves the fractions too large. It makes the divisor too great, and consequently fractions are left and difficulties are experienced in assigning them to proper districts. The divisor is 6,618. Well, it will be observed very few counties have 6,000 of a population or multiples of it; some three or four of 12,000; but for the most part neither number would suit. In fact, a still larger number would suit better yet; but in view of the other counties coming in, the house would be full as large. With the number I propose, it would be sixty-six; which would be as large as need be probably. But I think we get some nearer to the subject by increasing from forty-six to fifty-four. There are nine senatorial districts, which are arranged so as to present very nearly equal population. The difference between the greatest and the least is 2500; the difference between the others is of course less. It strikes me the number, at any rate, ought to be a multiple of nine—ought to have forty-five instead of forty-six. I propose to make fifty-four, six times nine, assigning the six delegates to each senatorial district. I intend to move at the proper time that that shall be the mode in which the delegates shall be distributed. Or, if these senatorial districts are retained, to be assigned an equal number to each senatorial district. Gentlemen will observe that the difference between the highest and the lowest senatorial districts as arranged are not equal to one-half the multiplier proposed; and the principle as adopted by this committee, and usually adopted would give a delegate to less than one-half of the divisor; so that there would be nothing growing out of that difference in the districts which would require an additional delegate. If you give six or any other number to each senatorial district and apportion that six between the different counties composing the district you get nearer a fair distribution than by apportioning them throughout the State at large. Because each senatorial district comprising one-ninth of the State will have the same number of delegates; and in apportioning off the fractions, as they will in every district, if a large fraction, less than one-half, of one county of the district does not get directly represented, its interests being to some extent with the other counties of the same district as they are arranged here, it will have a representation from an adjoining county and in matters affecting that section will be just as fully represented as if it had the delegate itself.

I hope the Convention understand the principle that I am endeavoring to get at. I shall propose to give to each, to apportion the delegates among the senatorial districts, giving to each the same number of delegates with a view to the greater equalization of fractions; each senatorial district dividing its own six (or five) members as the Convention may vote, will come nearer to an equality of representation with the other districts than if we divide them throughout the State; for the reason that an unrepresented fraction of one county will be probably represented from the adjoining county; and this certainly is fairer than to take the excess delegates away from the district where the fraction is and give it to some distant district with which it has no immediate connection. Senatorial districts are arranged, as I understand, on the basis of throwing together in a district counties whose commercial interests at least—perhaps other interests—are identical or nearly so; counties that revolve around the same commercial center; whose business looks in the same direction; whose manufacturing interests are the same. And this gives to the senatorial districts a feature which I am very anxious to impress upon you. I stated in some remarks when this subject was up before that we failed to come up to the true principle, to receive the benefit which is derived in other places from the distinctive legislative powers in the two houses, as for instance, in the British Parliament the House of Lords represents an entirely different interest from the Commons, and in the Senate and House of Representatives of the United States different interests are as also represented. One represents the states as such; the other the people. It is not necessary to suppose that even in the British Parliament the interest represented more particularly in the House of Lords is diverse or opposite as regards the safety of each. But every question that comes up, in order to be passed by those houses is looked at by the two houses from different points of view and all the aspects which the question bears are then likely to be regarded. I can see no other way by which we can render the two houses beneficial to the same extent, or nearly the same, except by something like the mode the committee has pursued. It is true, by having a larger constituancy for the senator than for the delegate, this is to some extent arranged; because the senator must consider the interest of every county of his district, whereas the delegate will look after the particular interest of his county. You set up, then, not between the senator and the delegate an antagonism of interest, but you do set up so much diversity of interest as to induce a more careful

examination by the two houses of all questions presented than would be given them by one house.

I therefore hope that with a view, as well as for the other reasons I have stated, to render this distribution of delegates among the senatorial districts better and more perfect, the Convention will consent to increase the number of the delegates to the number I have indicated, fifty-four. It is but a small addition—only eight additional ones; but I think it will be found to subserve a very useful purpose; will enable us to give better satisfaction to those to be represented. Because the representation will bear more equally than we can make it with a smaller number.

MR. LAMB. I do not understand that the precise question which is made here involves the question of apportionment of numbers to the senatorial districts. If it does—if we are to have the two questions under consideration at the same time, it must necessarily lead to great confusion. I mention this matter because I want the Convention to understand that I think there are some objections of a grave character to the plans of apportionment suggested by the gentleman from Wood in regard to the apportionment of delegates, though I did not conceive that that question is directly involved in the question before the house, and do not at present want to discuss it, while, at the same time, I am in favor of the motion itself which he has made to increase the number of delegates from forty-six to fifty-four; and I will state very briefly the reasons why I am in favor of that particular motion.

In the first place, I object to the number forty-six, and for this reason: It is an odd number. It could not be possibly selected for any other purpose than to subserve some particular object for the moment. Why should forty-six be selected unless it happened to fit some particular and special purpose? Now, I do not want our Constitution to go out with that on the face of it. I must say that no man in any part of the country seeing a number of that kind selected as the number of the house of delegates can possibly give any other explanation to it. It bears that on the face. If we select fifty-four, why there is this reason to give for it. It is exactly three times the number of senators; and it is a very ordinary provision in the constitutions of the different states to say that the districts shall consist of one-third the number of representatives. Now, I ask the members of this Convention if they can imagine why this particular number (forty-six) is selected? Unless it was that it happened to fit some particular case?

I have no objection to this particular number. You have forty-four counties this side the Allegheny mountains among which to distribute your representatives. You have only to provide therefore for a house of delegates only exceeding the number of counties by two. Now, every county must be somehow or other represented. I do not care what system of representation therefore you devise, you have not a sufficient excess of delegates in order to distribute the numbers of the house of delegates in anything like a fair proportion to population. You cannot do it, and provide that every district of the State should be represented in some way or other. You must have a larger excess in order to enable you to give to those counties which have a large population their proper share of representation according to the principles you have established. You have established unanimously the principle that representation should be apportioned as nearly as possible in proportion to the number of voters. When you come to apply these to numbers forty-six and fifty-four observe the difference of results. Forty-six gives a ratio of representation to one delegate for every 6618 whites; fifty-four one to every 5637. By applying this ratio to the population of the different counties the fractions on the ratio of 6618 amounts to 138,983; on the other ratio to only 90,000. You have therefore to apportion a large number of your delegates among fractions; a much larger number of your delegates among fractions in the one case than in the other; and, of course—for it results necessarily as an arithmetical proposition—your apportionment approaches much less nearly to the principle you have adopted of apportioning representation according to the number of the white population. With forty-six members of the house of delegates and your ratio of 6618, you have fractions not represented—necessarily so—of 3881, 2908, and the like; with the other you have no fraction in any case unrepresented amounting to 2100. Your apportionment, therefore, will certainly approach much nearer the principle you have adopted in the one case than in the other; and you can see it must be necessarily so because with forty-four counties forty-six is too small a number to allow an apportionment according to population. Trace this matter through some of the details. Adopting your house of forty-six and your ratio of 6618, you give to Greenbrier, one of the new counties which you propose to include, in the new State, with 10,499 white population, you cannot give her but one representative. Pocahontas, right alongside of Greenbrier, with a popula-

tion of 3686, must have a representative too, or her people would be entirely unrepresented.

The number fifty-four presents another advantage to my mind in regard to Mason county. Mason, it has been stated here, complains loudly that the census does not represent her population truly. I do not think that complaint well founded; but I do not propose to discuss that question. But if you adopt a house of fifty-four you give Mason county two delegates with a population according to the census of 1860, (8752) and she will have no more if she has the full population which is claimed for her in the report of the minority of the committee (12,770). The only effect would be that in one case she would be slightly less than double the ratio, and in the other case slightly over double the ratio. But whether injustice was done her by the census or not, if you adopt fifty-four she would get all she would be entitled to in either case.

For these reasons, gentlemen, I think the Convention ought to adopt the number fifty-four, which is a change of only eight. It can make very little difference in the matter of expense, and it will operate much more equally; it will enable you much better to shape your practical measures in conformity with your general principle that the members are to be apportioned in proportion to white population.

THE PRESIDENT. Members will address themselves to the Chair and not to the house.

MR. STUART of Doddridge. Mr. President, I yielded the floor to the member from Ohio from the fact that he is chairman of the committee, for the purpose that he might defend the report, I must say if I had thought the gentleman was going to make an attack on it I would not have yielded in that way. I think it is courteous and right that the chairman of the committee should always have an opportunity of defending a report, but I did not know he was going to make an attack.

MR. LAMB. Mr. President, will the gentleman excuse me one moment. The gentleman will recollect that I gave full notice to the committee that I intended to differ with them on this point.

MR. STUART of Doddridge. We are not to speak outside the committee. The gentleman had a perfect right to make a minority report.

I shall not trouble myself with the cube-square-root gentleman from Wood to get delegates into senatorial districts; because I

do not think this matter of much importance, whether you square them in or cube them in so you get the people represented and get a sufficient number of delegates. Now, sir, I am very much opposed to this cumbrous body and making our legislature as large as the gentleman from Wood proposes to do it. I would much prefer reducing it to thirty-six from forty-six. Having forty-six as the number, you divide I believe by 6618, or near that figure. The half of that is 3309. Every county adopted here in the report of the committee which has a fraction greater than one-half of 6618 is entitled to a representative. That gives nearly every county in the proposed new State at least one representative. I am satisfied that their need can be attended to if they have a representative, in the legislature without giving two, three or four in order to get a proper county so that the gentleman can divide it into equal portions—thirds, halves and fourths. If the object of the gentleman was to give all the counties a delegate, if his amendment carried out that, I would give it some favor; but, mind you, sir, it leaves these little counties which are not represented by making forty-six members still unrepresented. You do not remedy the evil a particle. Taking the forty-six and giving to the fraction 3309 the right to have a representative will leave some four or five counties not represented, with no members from those counties. If the amendment of the gentleman from Wood by making it fifty-four would give to these little counties a representative, I would be willing to adopt his amendment. But it does not. It is only giving the larger counties more representatives—but giving them more in order that they may be better represented. It would give to Ohio four instead of three. Now I am satisfied—and I think the people of Ohio would be—with three representatives, who could represent them as well as four.

MR. LAMB. Will the gentleman excuse me for one moment. Fifty-four would give Pleasants a representative by herself. It is only one of the counties now included in delegate districts that would then have over half the ratio or anything near half.

MR. VAN WINKLE. Pleasants is a very hard case to understand.

MR. STUART of Doddridge. Yes, it makes a difference in one county but it leaves Clay, Webster, McDowell, Raleigh and Tucker without a representative, and it is all for the purpose of giving these other counties more representatives, giving a larger body to the legislature. My experience is that we can get along much bet-

ter to make a smaller number. Because I am satisfied we will get along much better with our legislation, with much less expense and much more satisfaction to the people generally. If our present legislature was one-half what it is at present, they would do the business equally well, be at one-half the expense—one-third the expense because the time would not be consumed—and they would get along better. The only object of the amendment of the gentleman from Wood seems to be solely for the purpose of giving more representatives to these larger counties; because it does not add to any of the other counties except Pleasants. I would much prefer, making a special section in order to give Pleasants, one rather than add seven more. Because those seven other representatives would be tacked on to these other counties when they are all well represented, and I see no use in it at all. I am for having a government that will be as little expense as possible; but if I could see any good that would be accomplished by the gentleman's amendment, I would adopt it. But, sir, I move to amend the amendment by making it thirty-six. That gives a divisor of 8431 and a fraction of 4215. We would have a much more manageable body, we would legislate much faster, much less expense, and equal satisfaction to the people of the State.

MR. POMEROY. This, as I understand it, is an amendment to the amendment offered by the gentleman from Wood, to diminish the number of the delegates to thirty-six. The original report of the committee is forty-six; the amendment of the gentleman from Wood, to increase it to fifty-four. I hardly know how to speak to this amendment.

MR. VAN WINKLE. The vote will be taken on the largest number first.

THE PRESIDENT. I would suggest the better way would be to strike out, then fill with the number, voting always on the largest number first.

MR. VAN WINKLE. I understand the rule in such cases is that any member may propose whatever number he pleases; they will be taken down by the Secretary.

THE PRESIDENT. Yes, sir; but there is no blank yet.

MR. STUART of Doddridge. I must insist that the question must be taken on the amendment to the amendment first, smaller or greater.

MR. VAN WINKLE. Not in reference to numbers or time.

MR. POMEROY. There is just where the difficulty arises. A gentleman insists on the vote being taken on his motion first, being considerable of a tactician. He understands there is a great advantage in an affirmative vote and will press that point. I am opposed to thirty-six and in favor of fifty-four, not from the suggestion that if that number is adopted it will classify them by senatorial districts. I am not prepared to say that I will go for that proposition. I would not from this fact: I want every county in this new State to have a representative; I want the small as well as the large ones. I would rather there would be a considerable fraction in a large county than have a county connected with another in a district; and when that matter comes fairly before the house I would like to give my views on that subject to show that the small counties ought to be represented, a man elected by themselves; ought not to be hitched on to a large county which may elect both members if they see proper and leave the other county entirely unrepresented, or represented only by a man who lives in another county. I feel to stand up for the weak and try to defend them—and these counties are weak. I do not mean weak in any sense except in numerical strength; and that is a thing they cannot control. There is another reason for fifty-four. It is just three times the number of the senate. In examining the constitutions of the different states you will find there is a proportion preserved, either four times the number or five times or three times or double the number of the senate, but not a number that is neither one nor the other, as this number forty-six can be. Having already fixed that the pay of the legislature shall be what I consider low—a fair compensation enough—it will add very little to the expense to have fifty-four representatives; and I think we will be more than compensated for it in the State by having each of these counties represented on the floor of the house of delegates. Every county in the senatorial districts can be represented by the senate but in the lower house I would have each county represented here if possible. I do not know whether it will be possible when we come to fix that; but one thing at a time; let us fix the number. I am opposed to reducing this body to as small a number as thirty-six and am in favor of increasing it to fifty-four; and whatever may be the manner of voting, I hope fifty-four will prevail.

MR. SINSEL. Mr. President, there were great fears apprehended here at the commencement of this Convention that there

was a "hankering after the flesh-pots of Egypt." I have never been desirous of returning to flesh-pots of Egypt; but if you increase the places and officers of this new State until they become as numerous as the locusts of Egypt, we may cry out, "Would to God we were back by the flesh-pots of Egypt." Now, within the bounds proposed for the State we only have thirty-eight delegates in the legislature at Richmond—would only have that. We have already increased it to forty-six, and now it is proposed to make it fifty-four, an increase of sixteen. Well, it is argued here that it would operate nearer equally on the counties. Now, let us see how it will be. Here is Pleasants with a population of 2926. They say that Pleasants then would be entitled to a representative of her own, giving to Wood county two, making three then where there is two now. Well, now, here is Cabell with a population of over seven thousand, she could only have one representative, with more than double the population of Pleasants. Is that equality? Here is Taylor, with 7,300. According to the basis laid down for Pleasants she ought to have two—which we do not want. We have a fraction considerably over the ratio already fixed. We are satisfied with it. Well, then, in reference to Greenbrier and Pocahontas, Greenbrier has about ten thousand and Pocahontas only some four thousand. Well, now, there they are together. Their interests are one and the same. The representative from Pocahontas would feel almost as deep an interest in Greenbrier as he would in his own county and he would see that no improper legislation would be passed which would operate unjust towards her. And so with these other counties. Some of them do not have a representative from each county. One of the counties has only 1761, one only 1396 population, yet each must have a representative.

When you add up all these numerous offices—I see the Committee on the Judiciary has proposed to make nine judges. I think that is about right. I do not object to that. Look at the free-school system—the offices that will be created by that. Then take the report of the Committee on County Organization and you will be astonished at the number of officers the people will have to feed and keep up. They will cry out after a while, would God I was at the flesh-pots of Egypt, because we are to be eat out, root and branch, would be the natural cry. Well, how then? It is insinuated that the number forty-six—that there must have been some particular reason for it. Well, now, I can explain that. The Committee on the Legislative Department know all about that. I was in favor of forty-two, and a majority of the committee at one

time were in favor of it, but they found upon dividing it out amongst the counties it gave to Marshall with a population of something over twelve thousand but one representative, to Monongalia with a population of twelve thousand but one representative; to Preston, the same. Well, now, they just added in order that these four counties might have two, because the fraction was much more than half, they consented that they might add four more to have those counties fairly represented. Now I do not see what selfishness there could have been in that. Marshall's line was down here next the Panhandle; Monongalia and Preston lie away over yonder in the other corner. Well, if we had given them but one it would have been great injustice—or some, at least; though I do not know that it would have amounted to much in the end. Now, if we increase these offices to the extent proposed here I would not doubt much if the people would vote down this Constitution and we would be forced back to old Virginia. And then, in addition to that, many of these counties away in the mountains after this rebellion is put down—their population will be less than it is now. Many of them will flee the country and never return. So I think they are well enough represented. Many of them have a representative of their own when they have not the number. So I am opposed to increasing and opposed to diminishing it; in favor of forty-six just as it stands.

MR. STUART of Doddridge. I withdraw my amendment to the amendment.

THE PRESIDENT. The question is on striking out forty-six and inserting fifty-four.

MR. SOPER. Will the chairman of the committee instruct us. What will the whole number of delegates in case these counties conditional be taken in—what the whole amount will be? How large the body will be?

MR. POMEROY. Sixty-six.

MR. LAMB. It would add about six.

MR. VAN WINKLE. It will add twelve to fifty-four, or ten to forty-five. It will be fifty-five or sixty-six.

MR. LAMB. Mr. President, I would merely, in addition to the remarks which I have made, call the attention of the house to the number of members which other states have fixed for the house of

delegates, or house of representatives. I will state, in general, that if we adopt the number forty-six, we will have the least house of any state in the Union except little Delaware and Florida. Every other house of representatives or house of delegates in the Union, I believe, consists of over the number proposed here in the report of the committee. Maine has 151; New Hampshire 206; Vermont 230; Massachusetts 240; Rhode Island 72; Connecticut 215; New York 128; New Jersey 60 and so on. One hundred is about the usual number which seems to have been preferred by other states for their lower house. The number proposed in the amendment is but little more than one-half of what may be considered the usual number in this country.

I may also mention that another county besides Pleasants, if the number fifty-four was adopted, would have a separate representative. It is not a measure, as seems to be supposed by the gentleman from Doddridge, peculiarly for the benefit of the large counties. It is certainly a measure in which Ohio county has very little interest, for I care not one fig whether we have three or four representatives. Only whatever plan is adopted, whatever principle is adopted, I shall insist, of course that it be fairly applied to my county as it is to the others. But it is really a matter about which I would not care that (snapping his fingers) whether we had three or four representatives any further than it may become a matter of importance that no injustice be done us in the principle on which representation is apportioned to us. Kanawha county will gain a member. Mason will gain her proper representation, and Wood county, with her population of ten or eleven thousand will be put a little in advance of these counties with three or four thousand. Is not that proper and right? Or is there to be no principle in this measure at all? Is it to be simply a scramble among us for so many delegates? Not a contest for principle? I hope the Convention will put the matter on no such footing, that their object will be fairly, honestly, to give to all what we have proclaimed is the right of all, representation as near as possible in proportion to population; that this is not to be a mere idle declaration on the part of this Convention, but it is to be a principle which if possible we are to carry out practically.

MR. HAYMOND. I understand from the gentleman from Ohio if we take the forty-six delegates it would place us by the side of little Delaware. I will say to this Convention that if it will do that it is the very place where I want to be placed. Sir, the little

state of Delaware is the star of this Union. She is out of debt and has money loaned out. There is where I want to be.

MR. VAN WINKLE. Before the gentleman wishes to occupy the floor, I should like to say a few words although it is the second time. And, first, in reply to the gentleman from Marion. It is very unfortunate for the little State of Delaware that she has nothing to go in debt for. It is a state of three counties. If the gentleman wants to bring us down to that I cannot go with him.

MR. LAMB. Four counties.

MR. VAN WINKLE. She has not any place where she could make any internal improvements; no commercial interests that would require her to go into debt to any great extent. If merely being out of debt is what we are to strive for, we had better go back to old times when there was no credit or anything else, and cite these hard-money countries of Europe as the glorious country for us. There is some principle about this matter—one that has been sanctioned by a very long experience; one that can be easily traced and designated. It is most certain from the statistics with which the gentleman from Ohio has favored us that in reference to the number of which the lower house in the several states is composed, and it is certain from other circumstances, and from what we know and have read on the subject, that as a general rule there is some standard and some policy, something to be gained by making the lower house comparatively numerous. If the theory of representative government as declared almost in terms in the Federal and other constitutions, if the theory is that there shall be a direct, or nearly direct representation of the people, then sir, that theory most certainly requires that the house should be made as numerous as can be conveniently managed. The interests of the people would doubtless be better represented from this little state of 150 than by the proposed number. But there are limits to these things. We are limited, and other states might be, by the unwieldly character of the body when assembled. I think the British House of Commons has about 700 members, and they despatch business as rapidly as any legislative house of which I have information. The lower house of Congress has 233. The State of Massachusetts, it seems, has more than that. But be this as it may, there is a limit, of course, or the house would become unwieldly and too expensive. Now, sir, fifty-four, in reference to the population and extent of this new State is, in my opinion, a rather

small number. I would rather see it increased than diminished; and I think if it were increased it would tend to represent more directly the wishes of the people than the smaller could. There has been in the State of Virginia an extreme division into counties and minute divisions. Counties have been made very small and very diverse, or become so afterwards, in their population. This renders it necessary that the largest number that can be conveniently used in reference to these other considerations should be adopted in order that there may be a satisfaction among the people with the representatives assigned them. I am satisfied that if this forty-six apportionment goes out it will create great dissatisfaction. Counties will not be fairly represented. I favor the lowest number that would at all answer the purpose. As the gentleman from Doddridge showed us, there is not a county excluded from a separate representative that has over 1700 of population. Well, now, as much as we might wish to accommodate those counties, there are but four or five of them and it is to be hoped they will agree against another apportionment. As much as we might wish to accommodate them, it would be utterly impossible without doing infinite injustice to others, with a single representative. The largest of them—or the average—has not more than one-fourth of the divisor that is selected; and to give—as the gentleman from Taylor seems inclined to do, to give to 1700 the same he would be willing to give to Wood county, would be an injustice that I think we would be as unwilling to submit to as I hope this Convention would be unwilling to inflict, because we would then have a fraction of four thousand and a good deal upwards utterly unrepresented. There is an objection and always will be, and it is an objection that these very small counties will have to put up with, much as we regret it. The necessity for it arises out of the circumstances of the case; and unless we extend the house to some 180 we could not give each of them a representative; or if we allowed them one for a fraction over one-half we could not do it with a house of less than one hundred and do justice to the rest. But it is the part of wise men when they cannot do all that is desirable to do the best they can; and I think the chairman of the committee has very certainly shown that although the amendment proposes to add eight members under which more justice will be done than with the forty-six. And I appeal to members now if for the sake of having made a good distribution, for popular applause and for the satisfaction they would feel in their breasts, that they would do much greater justice by giving us the fifty-four

members than forty-six. It is important certainly that there shall be a feeling of satisfaction as far as possible, as far as we can by adhering to principle and strict justice, that there should be a feeling of satisfaction throughout the borders of the State, that when we go into operation as a state there should be as little cause for heart-burning as possible. Our prosperity as a state will very much depend on the harmony with which we enter on it. If we can go in satisfied that every portion has had fair treatment in reference to such other measures as may affect them locally, then we may look for that harmony which may build up our State rapidly. But if we go into it with these heart-burnings to any extent, I am sure, sir, a state of things will be engendered which every member of this body will regret to see.

Now, as to the mere cost of eight additional representatives, what is it if they do their work well—if they effect this purpose of giving not only the appearance but the reality of more justice to others? What is the cost compared with that? We are not here to make a tuppenny State—of reducing everything to the single purpose of reducing taxes. Everybody knows the expenses of the State could be paid with very low taxes. That is not what foisted this debt on us. We might have had as large a school fund as any other state if it had not been for the accumulation of the debt for internal improvements. And this new State can go into operation now with all these things the gentleman speaks of and yet be managed very economically. And I wish to say, as my opinion—I have not examined as strictly into the subject as I should to pronounce decidedly upon it—I am very strongly of opinion that they will find if the government under the systems we devise here goes into operation they will have a cheaper government than they have ever had before. Our complaint is not so much that we have had to pay taxes; it is that we have had no benefit for them. If we can substitute a system that will give us the advantages that are enjoyed in other states of this Union, which we have been deprived of, then I apprehend the cost cannot in any event be more than will be abundantly compensated. But I think, as I have already said, that they will find when we get into operation, with the representation proposed here we really will have a cheaper government than we had before. Gentlemen must not consider, sir, in fixing this number of representatives that if we had so many in the old legislature so many would do to make a separate legislature. That certainly would not be the case. We will want more senators certainly. I might consider in that connection that we have been complaining

that we did not have the representation to which we were justly entitled. It was a great complaint previous to 1850, and is to this day in reference to the senate. So that that argument defeats itself and shows that in increasing the number we are only doing what our people have been contending for. They have been contending for greater representation in the counties in which we are about to give them, in a separate State, precisely what they have been contending for. I think upon the whole the proposed increase is so trifling that gentlemen will give it to us in order that these advantages may be realized.

MR. BROWN of Kanawha. I feel some doubt on this subject. I have a strong antipathy to enlarging the number for the main reason that we augment the expense of the government. Still I fully concur with the gentleman who has taken his seat that every extension in the number of the delegates brings the government more directly home to the people and in that view it is a very great advantage. It popularizes it just in that much precisely. And in that view it commends itself to my favor. But this is not the only benefit to be derived from it. In fact, these things are benefits and evils, and we have to balance them. One difficulty we have in voting on this subject is that we have made no division, or attempted none, upon this new number fifty-four. Therefore, I do not know how it will work. I have had no opportunity. I have attempted it on the number forty-six; but there were difficulties to be overcome there. I confess myself content with this report, and I have no objections to attempting it again on the fifty-four, and if the advantages can be found I shall not hesitate to add the additional number. If, on the other hand, I can find them by diminishing to thirty-six, I shall not hesitate. Have no particular preference for forty-six over any other number; and therefore before having this vote, if it is the only subject for consideration, I propose we should suspend this matter until tomorrow that we may have an opportunity of looking over it tonight.

MR. HAYMOND. The difference in results between the two numbers would be about this. Pleasants and Wood are a delegate district in conformity with the numbers embodied in the report and entitled to two delegates. If fifty-four be adopted they would be separate. Pleasants having more than half the ratio would be entitled to a delegate to herself; Wood would be entitled to two delegates. Barbour would have two; Greenbrier two; Jackson two; Kanawha would have three and Mason two. Monroe would

have two and Ohio four, being an increase of one delegate in each case. The rest would be the same as now, except that Raleigh would be separated and entitled to a delegate by herself.

MR. BROWN of Kanawha. I move to postpone the subject.

MR. HERVEY. Upon that motion I wish to submit a remark or two. It would be evidently proper to postpone this question. This apportionment is made on a report embracing forty-four counties—apportioning delegates among forty-four counties, population 304,433. Now, there are seven additional counties within our boundary which are not taken into this count.

MR. VAN WINKLE. They will make about two senatorial districts with the same population as the others and would be entitled to the same number of delegates as the other districts.

MR. HERVEY. I wish to call the attention of the Convention to this additional fact, that the senate shall be composed of a certain additional number and it is now proposed to fill that blank, and if that blank is filled there is no provision—

SEVERAL MEMBERS. There is another provision in another place, already adopted.

MR. HERVEY. I speak now of the house of delegates; and if the house proceeds now to fill this blank absolutely without taking in these seven transmontane counties, it will evidently have to do this work over again for it is leaving out a population of 54,059.

MR. VAN WINKLE. The case is provided for in Section 10, passed by.

MR. HERVEY. That may be true, but in our estimates this argument has not been taken into account.

MR. DERING. I move we adjourn.

The motion was put, and the Convention adjourned.

XXV. FRIDAY, JANUARY 10, 1862.

The Convention was opened with prayer by Rev. James G. West, member of the house of delegates from Wetzel county.

Record of yesterday read and approved.

MR. VAN WINKLE. Mr. President, I want to make an admission. I offered some ciphering last evening which I find not quite

correct. I find that the six members to a district will not divide equally owing to some economical affinity by which those counties in the three northern districts have settled themselves down to such shapes that they cannot be changed. I had endeavored to draw an argument from the importance of doing so in my remarks last evening, and it is but fair to say I find it will not work. However, I find while the three northern senatorial districts lose a member in consequence of difficulty of making a distribution, and while I believe the counties composing that district would be much better satisfied with the numbers assigned them—which of course have to be even numbers, two or one—than they would under the other arrangement, the thing is compensated by this: those three districts have the least population of all the senatorial districts; and thus what they lose in reference to the delegate is gained in reference to the senate. So that there is a sort of poetical justice yet in it. What is lost in the extreme northern district is gained in the extreme southern district where the counties are small and numerous and where a much better arrangement would be made. I may say in this connection that I have tried to figure forty-six and fifty-four, and am satisfied that fifty-four makes a division which will be much more acceptable to all concerned than forty-six can possibly be made. The principle I spoke of in reference to senatorial districts cannot be carried out with fifty-four or with forty-six, nor, I suppose with any number short of sixty-three. I thought it was proper, as I had endeavored to make that an argument to say that I found the facts would not bear me out.

MR. STUART of Doddridge. I knew the gentleman would find that difficulty. I tried it myself.

I desire to offer an amendment to the amendment to test the sense of the Convention, and I believe we can get at it in this way. I will support the amendment of the gentleman from Wood provided the amendment to the amendment is adopted. It is this "and be so distributed as to give every county one delegate." I want to test the sense of the Convention on that.

MR. VAN WINKLE. I can reply to that, sir, that it is utterly impossible. If you are going to do that you have got to rob other counties and make the fractions of those greater than the whole population of these small counties. The hardship of having no separate delegate under the fifty-four arrangement will fall on fewer counties neither of which has a population over 1761. Now, whose wisdom it was to make such counties I do not know; but if

people will make a county that cannot afford to support itself, to build its public buildings or pay the taxes necessary, they ought to be willing to take the consequences. I am told some of them now would gladly be annexed back where they came from, or have some other arrangement made by which they would be relieved from this burden of taxation if they go on and erect public buildings. The counties are Calhoun, Webster, Clay and McDowell, if I am not mistaken, and the one having the most population is 1761, and it goes down as low as 1396. The divisor under this arrangement is 5637. Now the largest of those counties is not one-third and is not entitled to one-fourth of a member.

MR. LAMB. About one-fourth.

MR. VAN WINKLE. Not to one-third of a member. If you give them one-half a member, you are doing more than you do for other counties. In order to give a county of 1396 white population a member, Wood must be deprived of one member and will have a fraction of nearly five thousand that will be unrepresented. Now if gentlemen think there is any justice in that, their ideas are different from mine.

MR. STUART of Doddridge. Wood county will get two even under that arrangement.

MR. VAN WINKLE. She cannot have it. The additional members, by which Pleasants, with a population of nearly three thousand gets one to herself under fifty-four, which she would not get under forty-six, would deprive Wood of the other member. She would have to elect, as it was in forty-six, to elect one member in company with Wood and leave Wood to elect one. So that Wood might have one and a half; which would still give her a fraction double the whole population of Clay or Webster. It would be too great an injustice. We cannot help it if these counties have run themselves down so. As they increase in population and a new apportionment is made, their condition will be altered. But most certainly if this want of representation is to be visited anywhere, it ought to be visited on those who have the least claim to full representation.

MR. STUART of Doddridge. Mr. President, the gentleman is mistaken in regard to the county of Wood. It will be found that under the plan adopted by the committee there is exactly eight counties that get no delegate under that arrangement of forty-six.

If we add eight it gives to Pleasants a delegate and leaves the two to Wood. There is no mistake about that. We have calculated it. If the gentleman will look at it, he will find that is true, that Wood will be left with two delegates, and the eight additional delegates proposed here will be given to those that have no delegate under the basis proposed by the committee. I can see no earthly object in increasing the number unless that object would be to give the small counties a delegate. It is only giving additional delegates to the larger counties, which is unnecessary; and consequently the increase, in my opinion, is not necessary. But if it is giving the small counties a representative, then there is an object in it; and in order to test whether that is the object, I propose the amendment. I desire to test the question by it.

MR. VAN WINKLE. I would suggest to the gentleman to withdraw his amendment until we come to vote on that subject. The consideration of what could be done with fifty-four members, would afford a place where the amendment would come in more properly.

MR. STUART of Doddridge. I want to vote for the gentleman's amendment, but I want to understand where the additional delegates are to go to before I vote for it—whether to the larger counties. If it goes to them, I cannot vote for it.

MR. BROWN of Kanawha. Like the gentleman from Doddridge, I feel very much disposed to know before I vote to increase the number, to change the number at all—to know how they are to be distributed; and as he has made a motion which looks to the end in view, but I think fails to accomplish it, I propose to amend his amendment if that be in order.

THE PRESIDENT. That would not be in order.

MR. DILLE. I would suggest the amendment might be accepted by the gentleman from Doddridge.

MR. BROWN of Kanawha. I will state it and see. I propose to amend the amendment by adding:

"to be distributed so as to give Hancock 1, Brooke 1, Ohio 3, Marshall 2, Wetzel 1, Monongalia 2, Preston 2, Tucker 1, Barbour 1, Taylor 1, Marion 2, Harrison 2, Doddridge 1, Tyler 1, Ritchie 1, Pleasants 1, Wirt 1, Wood 1, Jackson 1, Roane 1, Calhoun 1, Gilmer 1, Lewis 1, Upshur 1, Randolph 1, Pocahontas 1, Webster 1, Braxton 1, Clay 1, Nicholas 1, Greenbrier 2, Monroe 2, Fayette 1, Kanawha 2, Putnam 1, Mason 1, Cabell 1, Wayne 1, Boone 1, Logan 1, Wyoming 1, Mercer 1, and McDowell 1."

MR. STUART of Doddridge. I cannot accept that for this reason. It gives to Monroe one, to Wood one, when Wood is a larger county. My arrangement is much better.

MR. HERVEY. I would inquire of the gentleman from Doddridge whether or not the number eight would not give one more representative than he desires. If you will refer to the list you will find that Raleigh, Wyoming, with a white population of 7600, have now one delegate, whereas his amendment proposes to give them each one. It seems to me the number forty-three, if I am not mistaken in my calculation, would give each of the unrepresented counties delegates and allow the other counties to remain just as they are. If that is the object of the gentleman from Doddridge, then the number seven would accomplish his purpose. I find that he provides for two counties here, giving them the benefit of one delegate each, which two counties now have one. Consequently the number seven will meet the requirements of all the counties unrepresented, and allow the other counties to remain as they are. I would like to vote for that amendment if I understand it. I am in favor of giving the smaller counties each a delegate and allowing the counties now provided for remain as they are, if the number seven is the proper number, as I think it is.

MR. SINSEL. I am opposed to the amendment, because to carry it out it carries with it absolute injustice. It looks to me —and I cannot see it in any other light—only a grasping after power. Now, I am willing, let me be located in what part of the new State I may, to submit to anything like a fair rule carried out upon fair principles. What is Tucker, with 1300 inhabitants that she should have one representative while others with a population of eight thousand and over only have one. There is Greenbrier with ten thousand; and Wood, according to this arrangement would have two.

MR. VAN WINKLE. One and a half.

MR. SINSEL. Well, you say seven unrepresented. They will have that with two to Wood, and this just consumes the eight. Many of these counties in the southwest now have representatives with only the fractional number—the largest portion of them. Then every county almost from the Baltimore & Ohio Railroad south or the Northwestern Virginia Railroad, the large majority of them would have representatives on only fractional numbers and some of them not one-fourth. The county of Tucker with 1300 in-

habitants, but we are at the expense of a court in that county just as much as in the county of Ohio—costs just as much to pay the judges, to pay the prosecuting attorney, as in Ohio, and all the other judiciary when carried out; and add to that the expense of a separate representative. Why there will be nothing but a bill of expense any way you take them. And then the principle itself is unjust, unreasonable. I am opposed to it, utterly opposed to it.

MR. LAMB. Mr. President, I coincide entirely with the principle announced by the gentleman from Taylor for Ohio county. We are willing to consent to any fair principle fairly applied. I would ask the members of the Convention to reflect if there is not a principle concerned in this matter. We have announced and adopted unanimously among our fundamental principles that representation should be apportioned as nearly as possible in proportion to the numbers of those entitled to be represented. We have passed that, and it passed unanimously. Now, the old system of county equality is to be forced upon us in West Virginia. Mr. President, I am not a very old man but I do recollect when throughout the whole northwest when the changes were rung upon the outrageous character of such a principle, when little Warwick and the counties down in the oyster and herring eating country with a population of four or five hundred were entitled to an equal representation in the legislature of the State with counties of twenty to thirty thousand. The whole northwest rang with the iniquity of such a scheme. The gentleman from Doddridge is not a very old man but he, too, will recollect—and perhaps he may have made his maiden political speech upon the iniquity of abandoning all principles and forcing such a scheme upon the people in western Virginia. Now, it is to be brought in again. Are we to abandon all principles in this matter? Gentlemen, if you adopt this, do not attempt to perpetrate a fraud upon the people by holding out the delusive profession that you intend to apportion representation upon principle, that it shall be apportioned according to the number of people to be represented. Tell them at once that your system of apportioning representation is not the system proclaimed in the Declaration of Independence, that all men are free and equal, but that you amend that declaration by inserting that "all counties shall be equal." Is this proper and right? You abandon all principle by it. Then do not profess to be governed by principle. Strike out that clause which you have already adopted. Do not hold that profession out if you are to be governed in this measure

by this scheme of county equality. Sir, in reference to this matter, it is not any one county—the county of Ohio—that is directly concerned. Shall not we here rise to the dignity of maintaining a principle? Is it to be imputed to us that we are influenced by some such petty motive as this, that it is a question—as was said here the other day—of whether Ohio county shall have three or four members. It makes not the slightest difference in regard to the county of Ohio, whether she shall have three or four out of a house of forty-six or a house of fifty-four. Her relative weight is very nearly the same in any case, and the proposition that has been made has been entirely misunderstood in that respect. If you will look at the seventh section reported by the Legislative Committee, in which this thing is carried into practical operation, you will see that after the county of Ohio and the seven counties of Harrison, Kanawha, Marion, Marshall, Monongalia and Preston, and the third delegate district, the apportionment is strictly according to principle. In seven counties and one delegate district, the principle is fairly applied. The representation, even upon the number forty-six is fairly distributed among those counties according to a fair principle fairly applied so far as those counties are concerned. The difficulty as we found in the number forty-six is just here. The application of the principle of distributing representation according to population ceases when you come to the number 12,656, and all the counties below that and districts below that are put on a dead level. Is that fair? The number forty-six is objectionable not because it affects the representation of the larger counties, for those counties, as I say, even upon the number forty-six have their representation fairly distributed; but it is objectionable because below the number 12,656 you put all upon a dead level. There this scheme of county equality is to govern instead of the principle of apportioning representation according to population.

I want, however, to put myself right in regard to this matter with the gentleman from Taylor. I am afraid he misunderstood the meaning and purpose of my remarks yesterday. I certainly did not intend to intimate in the slightest degree that there was anything improper in the conduct of the committee, or that they were influenced by improper motives in stopping at the number 12,656 in applying the principle of apportionment according to population. I did remark that when our work went out to the public and they saw that it fixed the house of delegates at forty-six that no possible reason could be assigned by the public, they could see nothing else in selecting such an odd number but that it must

have been adopted to accomplish some temporary and local purpose. I spoke merely of the impression which the public would receive in regard to that. I did not intend to say that this number was unfairly adopted, or adopted from unfair reasons in the committee. The committee preferred forty-two, as has been stated already. It was extended to forty-six in order to do justice to certain counties, and my sole objection to it is that it stopped too soon. I do not wish to misstate the argument, to state the argument on the other side unfairly. We have two things to look to. One is to apportion representation according to correct principles; the other is not to make too large a house of delegates. I concur in the proper application of both these principles; but I think the number forty-six, really and practically as it does do, applying the principle of apportionment only to the seven larger counties and one delegate district, that we stopped there too short, for twenty-four counties and five delegate districts on that number are put upon a dead level. There is no apportionment there so far as those twenty-four counties and five delegate districts are concerned. The principle of county or district equality governs in regard to them. I would extend the principle of apportionment a little farther. At the same time I may say that I do not think upon any fair consideration of the subject we can determine that fifty-four would be an unreasonable number for the house of delegates for the forty-four or sixty-six if the additional seven delegates are adopted. If gentlemen will look at the seventh section in which the matter is practically applied, compare that with the tables, they will see that I state the matter correctly; that if we adopt the number forty-six the practical result of it is just this: we do apportion upon a fair principle of apportionment the representation so far as seven counties and one delegate district are concerned, and then we reduce all the others to a dead level of one each without regard to population. From the population of 10,499, which is the population of Greenbrier, down to a population of between three and four thousand (3686) in Pocahontas—from a population of 13,787 in Kanawha down to 1535 in McDowell—we adopt the simple plan of county equality instead of apportionment. I would extend the principle of apportionment a little further. I am aware that we cannot on any plan that the committee did or can devise make an exact equality. We are necessarily compelled to submit to some inequalities. In this case, as in all other cases where general regulations have to be adopted, individual cases of hardship can be pointed out. Such will be the result let us adopt any system that

can be devised. But the principle upon which we proceeded, as announced in the apportionment principle as unanimously adopted by this Convention is that representation shall be apportioned according to population, as far as may be practicable, consistent with the preservation of other great and important objects. I admit that one great and important object is—should be—that we should not expand unreasonably the number of the house of delegates. I mentioned yesterday the result of the examination of the constitutions of the different states; that even if we adopted the number fifty-four we would have, with the exception of two states, Florida and Delaware, a smaller house of delegates, I believe, than any other state in the Union. Is not this some evidence, is not this some proof, that the number fifty-four would not be unreasonably large? We have thirty-two states having a larger number, and two having a smaller number. One of these is Delaware, in which there are just three counties. It was impossible there to make a large house. They give in the State of Delaware seven representatives to each county, making twenty-one.

Mr. President, a great deal has been said about getting back to the "flesh-pots of Egypt." It strikes me we are not now disposed to go back to the old system which existed in Virginia prior to 1860. We all recollect what that was. Every county, I believe, had two delegates. Warwick, with 500 white inhabitants, if I recollect right—for it has been twenty or thirty years since I heard anything about this matter—had two delegates, and other counties with twenty and thirty thousand inhabitants had just two delegates. One man in Warwick counted as many as forty or fifty in other sections of the state. We do not extend the thing quite to that extreme yet. One man in one section of the state bounded by certain county lines is to count only as much as seven or eight men in other sections of the state. And yet we profess this principle of equality; and in the first instrument to which this nation owes its existence, the Declaration of Independence, is laid down the principle that all men—in all counties—are created free and equal. I know all counties are not. They may be "free" but they certainly are not "equal."

I must contend for the principle that a man whether he resided here or there, so far as political matters are concerned, is equal to the man that resides elsewhere. And I must also say to this Convention that this is a question in which Ohio and the larger counties have no interest. We may lose a fraction now; but the principle is fairly applied to us and what we lose now we will gain

at another apportionment. But it is the principle I object to—the principle embodied in the amendment of the gentleman from Doddridge; the principle which is also carried too far in reducing the house to forty-six, that the larger counties and districts should be put upon a precise equality of counties, not equality of men. As illustrating this same matter, I may refer here—at least it may serve the purpose of illustration—to the motion made by the gentleman from Doddridge yesterday, that the house should be thirty-six. Now, gentlemen, you have got six delegate districts in your plan; you have got thirty-one counties outside of those delegate districts; that makes thirty-seven. You would have had to make another delegate district, if the amendment which the gentleman proposed, but which he very properly withdrew, had been carried, to get a house of thirty-six, with your principle of county equality in full operation.

MR. STUART of Doddridge. I rise to a question of order. The gentleman ought to confine himself to the question before the house.

THE PRESIDENT. The gentleman in discussing the question—

MR. LAMB. I am merely using it as an illustration of the principle of county equality; and if the gentleman would wish to carry out that principle fairly—to strike out the principle of apportionment which we have adopted in our fundamental provisions—if he would wish to carry out his own principle fairly and to its proper extent, let him renew his motion and let the Convention adopt a house of thirty-six. You would then have this principle of county equality in full and fair operation; for you would be compelled just to give each county and district one representative, large and small. This would be carrying the thing to extremes, and the gentleman very properly withdrew it. The number forty-six applies that principle in every case where the population is less than 12,656. That is the result of that number. It stops the principle of apportionment at that number, and then applies the principle of county equality below that. The number fifty-four is liable to the same objection, only it carries the principle of apportionment somewhat farther. It still leaves this principle of county equality to operate with a few, however. It sacrifices that much of it to that other principle—too much; I am willing to concede a good deal—that the legislature may not be made too large a body.

MR. SOPER. Mr. President, I ask the Convention to look at this matter calmly. If I understand the principle upon which the

popular branch of the legislature is organized it is that all portions of the State shall be properly represented. And I believe, sir, in the eastern states the representation in the lower branch of the legislature is by townships instead of by counties; upon the ground, if I understand it correctly that no individual as an inhabitant of the county or town represented can represent it so well. It requires a person from the county to take care of the interests of that county to be represented and to have them properly guarded. I believe it is a very just principle in the administration of the government that we should always look to and take care of the weak. The strong are always able to take care of themselves; and instead of this being an argument against allowing these counties of small population a representative in the house of delegates I think it is an argument in favor. It has been intimated here by gentlemen that these counties are little, diminutive. Is that so, sir? Have they not got an equal representation on this floor and in this body? Why is it? It is because they represent a county organization. We have nothing to do with the wisdom which created that organization. That we have no business to inquire into. It is a matter that belongs to the people themselves; because of their small number of population brings any increase of taxation upon them, that is a matter for them without any fault to be found on our hand.

MR. VAN WINKLE. The difficulty is that it brings an increase of taxation on the rest of us.

MR. SOPER. Well, now, sir, let us look at that for a moment. We have here a session to last forty-five days, and a delegate comes from Tucker containing 1400 inhabitants, and he receives his three dollars a day—a little over one hundred dollars. Will gentlemen come up here and talk about the expenditure of a paltry hundred dollars and find fault—the county of Ohio and others find fault with that paltry sum because a county of equal organization has a representative in the house of delegates? It is too insignificant to be taken into consideration at all.

I deny that the popular branch in any legislature in this State is based upon equality of population. Why, according to the report which the committee has given us here, it is not so based. True they found a ratio; and what then do they say? Any county having one-half that ratio shall be entitled to a delegate. That is a violation of this principle of equality.

Another difficulty, sir, as some gentlemen have intimated here, when they speak of the insignificance of these counties, you attach them to a larger county. Now, who can control the statistics of that small county? Who can show it had representation in the delegation for all time if they feel disposed to, and if the small county is looked down on as not worth the notice, it may never have a representative in the house of delegates. Gentlemen have referred us to old Virginia and former days. I know very little about it; but I know what the representation is at this time. There is no equality in it. I reside in Tyler. She and Doddridge are connected as a delegate district. The two together have got at this time about twelve thousand population. And there is our neighboring county of Wetzel, with her six thousand population has a delegate, while the two Tyler and Doddridge, have but one delegate. That you will find wherever you go. You will find that in the lower house equality of representation according to population is not adopted.

Now, why is it not right to give every county in this State a delegate? I have before referred to the fact that no one so well as the individual in the county knows the wants of the county and can take care of it. Well, these small counties require the fostering hand of the legislature if it can consistently be given to them. And hence that is an additional reason in my estimation, in my opinion, why they ought to have a man from their own county who can represent to the legislature truthfully the situation and its wants.

Well, again, sir, much has been said about Tucker county. I do not know—she has now about 1400 inhabitants, and I have noticed in the papers that there is an application before the legislature to permit a portion of the people of Preston to take a vote on the propriety of being annexed to Tucker county, by which, I do not know how greatly, but if it prevails there must be some equity in it or the application would not be made—she probably may come in with a respectable number of population. I cannot speak very intelligently in regard to this subject, but I put it upon the ground, sir, that here we are about to organize our new State and we have invited every county to send here a delegate for the purpose of expressing the views of the people of that county; and I want, if we can organize our new State, that every one of those counties shall have a representative in the house of delegates. I believe it to be right and just that it should be so; and I believe,

sir, that it is according to the principle which has been adopted probably in almost every state in the Union.

I hope this amendment may prevail, because I deem it to be just. I would say one other thing. In taking care of the interests of the people, I hold that one delegate from the county of Wood and two from Ohio would take as good care of the interests of those counties as if they had a half dozen. I am now speaking of what I suppose to be the real interests of the counties. But I do say that if you shut a county out from representation at all no man from another county can take as good care of that county because they are not supposed to be well acquainted with its wants. I apprehend that when gentlemen talk here of injustice to the large counties it is more from a pride of feeling than anything else. It is not a real necessity, because their interests with one representative will be taken care of as well as though they had a larger number. There is not a county in this State I think, sir, with but one representative but who is well acquainted with all portions of the county. And hence, being well acquainted with it, they are prepared at all times to give such explanations as may be necessary in order that there may be righteous and just legislation in its behalf. Why, sir, I would rather see this legislature limited to the number of counties in the State than to see injustice done to any one county. Now, I remarked, sir, that we found the counties here already organized, and it does not become us to inquire why they have been thus organized. Yet in the preparation of this Constitution you will find when we come upon that part of it that our committees have guarded against the admission hereafter of new counties with a small population. I believe the proposition is, too, that no new county shall be created hereafter with less than 4000 inhabitants and the counties from which it shall be taken shall be left with that amount of population. So that even if that was an error in former legislation in creating these new counties, we in our new State will have guarded against it. Well, then, why shall we not take those small counties by the hand and why not place them on an equality, so far as it requires to enable them to have a representative in the house of delegates—extend to them that right? I believe, sir, it is right upon principle, that they can only be well represented by a delegate from their own body. I hope, sir, this amendment may prevail; and I believe that although it will increase from the report of the committee it will not be necessary to increase it beyond the proposition of making the house of delegates to consist of fifty-four members; and, if I understand it rightly—

if these counties which are to take a vote to determine whether they will become a part of the State or not—if they should all vote to come in, then our house of delegates shall be fixed for sixty-six; and I would like to see sixty-six as the permanent number, with a clause in the Constitution that every county shall have a delegate, so that if our counties should extend to sixty-six delegates there would be but one in each county. I am, sir, in favor of the amendment.

MR. BROWN of Kanawha. Mr. President, I have listened to the remarks of the gentleman from Tyler with pleasure; and while I admire a man who stands by principle, I am always struck, though with another natural feeling that always exhibits itself more or less in the human heart, that a man is always extremely pertinacious for a principle that favors his own interests. And when a gentleman is advocating the cause of the back counties so strongly, my mind naturally inclines to the inquiry, is he from a back county. If he is, you can see a double reason for his zeal. Now, if I find a gentleman from a little county advocating the principle of giving the largest number to the largest county—

MR. LAMB. I have stated, and it is a fact, that with reference to the eight larger counties the principle of apportionment according to numbers is fairly applied to them; but to the counties having a population below 12,656 there is no such principle applied. That is the fact of the case. The gentleman may misrepresent it as much as he pleases, but it is unquestionably a fact.

MR. BROWN of Kanawha. I do not desire to misrepresent anything at all.

MR. LAMB. It is misrepresenting the matter entirely.

MR. BROWN of Kanawha. I have not misrepresented anything as yet. The gentleman seems wholly to misconceive the object of my remarks, or the purport of them. I am one of those who never question the motives of others. I do assert this proposition: that men will be found pertinacious to adhere to a principle that favors their own side; and as I understand the gentleman is from a large county that the principle which does secure to the county he represents a large delegation—not larger than we may accord it perhaps, as the apportion is carried out; but I do maintain there is a total departure from the principle in the report of the committee and he has acknowledged it to be so. I represent

a large county, too, and I acknowledge it has its influence upon me. I presume every man does—I know it is a fundamental principle in human nature that a man adheres to that which is his interest. It is nothing to his discredit; if the gentleman thinks it is, why I suppose he is alone in that supposition. I do not.

Now, sir, you set out with a fundamental principle, and that is that the representation is to be distributed in proportion to population. How far do you carry it? Not beyond your nose in the plan proposed. And as long as you are led by counties, it is utterly impossible to carry it out. The gentleman says all men are equal, but all counties are not. Why, sir, whenever you treat them as entities, then they are equals as much as men. A little man is no more equal to a big man than a little county to a big county; but as entities, they are both alike. They are separate and distinct—a separate organization—and in that they are perfectly equal. States are not equals in the sense that one is five times as large as another; but in their representation in the United States Senate, they are equals as entities and existing bodies. Let us carry this thing a little further. If the gentleman adheres so closely to the principle and it requires us to abandon every other principle to carry out the simple idea of population and principles, why not carry it out, because it is perfectly feasible. I deny the proposition that it is impossible to carry it out. Lay off your State into equal districts by hundreds or thousands and you will have your representation based on numbers, and there is no difficulty in the world in it. There is no state in the Union that is so based. There is none in the Federal Union in which it is so based among the states; for while our Federal Constitution provides the same idea, to apportion representation according to population and property combined, yet there are little states secured a representative in Congress though upon the basis she could not get a quarter of one? There is an idea, giving to the existing entity a separate and independent state and to the few individuals that inhabit it. So that this idea of equality in representation is always subject—or at least is always modified in its application by another principle; and when these principles happen to be in conflict it is absurd to attempt to carry out one to the annihilation of the other. The only wise course is that when you cannot get each in its perfection, instead of annihilation, get one by the application of the other and equalize by compromise. You can do no other way.

Well, now, in regard to the argument that it has been a subject of controversy in the past history of the state—before my day,

however—when a big county in the west was balanced by little Warwick in the east—it was not altogether in the inequality between those little counties and the larger ones, but the great question was between the two sections; because you did not hear a big county complain of a little county by the side of it having a delegate, for they would vote just alike. It was because that operation was made to give neglect in the state that made men quarrel. So that the idea of a perfect equality in representation among counties or in individuals cannot be carried out successfully and never is attempted by the advocates of the principle. It is only to be applied in a modified form, always with reference to other things that are equally the subject of consideration. Gentlemen seem disposed to quarrel with the fact of the existence of small counties. I do not see that this is any cause for complaint. I take it the largest county in the country has been one day or other quite a small one. Why, I heard one gentleman in this body say that Preston but a few years ago, in his recollection—I do not remember its numbers—was very small compared with what it now is—perhaps a third or fourth. Why, sir, you must recollect, these little counties were born but yesterday. As well might the man quarrel with the infant. These infants will soon be men. We are forming a Constitution for a longer duration. Now, if it was such a case that these small counties never were expected to grow—and some of them are superior in territory, three or four times, to the large counties—only they have not had the advantages and opportunities that have been extended to the others. Well, sir, I maintain that in basing this representation, we should look to the territory, the capacities of these counties to contain a population that will soon fill them up. I remember that Roane county was formed off of Jackson and a little piece of my own county, and I do not know whether any other or not—a mere trifle in itself. Now, sir, it is a very respectable county. Yet in the last legislature, I believe, it was represented by a gentleman who did not live in any part of it. A part of it, sir, is represented by the delegate from Kanawha, a part of it by the delegate from Jackson. Now, I say this very case may come up, that Roane may have no delegate at all, in one sense, if the conflicting interests object between Roane and Jackson and Kanawha. At least she is not represented by any of her own citizens in the house. And I think it ought to be. And while I am not in favor of violating any principle, when you can with anything like reasonable regard to the principle give to all these separate counties a representative, I am in favor of it.

And there is another principle that enters into my mind. If in giving these representatives to these small counties they would get scattered all over the State, so they do not fall in one particular locality so as to destroy the equilibrium of the State, then there is no objection to it.

The gentleman from Tyler alluded to the fact that, in the report of the committee, Wood and Pleasants were coupled in a delegate district. It is plain to me exactly what the operation of that would be. If you adopt that principle, you might just as well give all the delegates to Wood, because Pleasants has no voice there. Men are governed by their interests. When you attach a little county to a big one, you exterminate that little county. If you could so order that all little counties would be thrown together, there would be some equality in that. Take the case of Tucker and Preston. You annihilate Tucker. It is the same way if you attach Clay to Kanawha. Now then, while you held out in your pretense of basing your report on population and put the county of Clay with Kanawha in order to give Clay a representation, by it you only effectually give to the people of Kanawha the complete power of ever refusing to the people of Clay any man in the legislature, by always selecting their own men and asking Clay no odds about it. Thus you annihilate these entities, and you annihilate also the individuality of the people in those entities. The first idea is in ordering your report upon population as far as you can do it consistently with another principle of giving each county a representation in some form or other. Then you have a principle which does justice as far as it can be done to all parties. It is impossible that it can be done completely. Now, the gentlemen who advocate the idea of apportioning according to population, while they assure us they are earnest advocates of that principle as the basis of representation, tell us they do not propose to carry it a foot farther than it harmonizes with this idea of entities, of distinct, separate corporate organizations, and wherever it interferes with that, that is to be thrown off and those individuals must go unrepresented and take their chance in the other delegate. There is a complete departure from principle. They only do it in subjection to the idea that there is a county that ought to be represented and ought to be looked to. In apportioning representation in the United States House of Representatives, on the basis of population, they never throw off the excess or fraction and attach it to another district, but keep in view the other idea of state existence. I confess then, sir, that I am for extending the number of delegates for

the purpose of giving each of these entities a representative because that by so doing you diminish the inequality that will exist on the principle of a ratio. The question to my mind is should not the reason for extending be sufficient to over-balance the objection of enlarging the house unnecessarily. Because I would just as soon take the house at forty-six, because it would be cheaper and smaller and I hold would be more efficient. But by doing it without doing greater violence to this principle of apportionment, you can more nearly approximate that principle by giving to each county a delegate than if you retain the smaller house and give to each a delegate; and you might go on and carry this practice out fundamentally by just taking the ratio of population and give a delegate to the very smallest county in the State. The objection is it makes your house too large. And there you have to destroy one principle in order to attain another end. Why not say that the county of Tucker shall be the ratio of population for a delegate, and Tucker shall have one and other counties shall have as many more as they have multiples of the population of Tucker? Only because your house will be too large. Therefore you attempt to cramp the principle by diminishing the house. We will do it in subjection to the principle whether each entity shall be represented, and you can attain more justice and satisfaction among the people than by diverting from the one entirely.

Again, sir, it is notorious—we know it—that there often exists that accord and interest in counties as counties alone as individualities. We know not the circumstances under which these small counties have been formed. One allusion has been made to individuals in Preston who are obtaining the permission to take the sense of their people on the question of being attached to Tucker. I have been informed of another proposed to be made in Clay and Nicholas, to be stricken out of Nicholas and attached to Clay. Thus even now efforts are making to equalize these counties. Well, sir, giving them a delegate only renders it more fixed and certain. These people will be equally represented from the one county, from the large and the small. In fact the people of Preston may be getting an advantage by going from one to the other on the question of delegation.

I, therefore, with these views shall feel myself compelled to vote that the principle that is departed from is only in a modified form and to attain another idea which if not of equal is of sufficient importance to reconcile us to the consideration that while it vio-

lates no great principle, does no more injustice to anybody, it does substantial justice to all.

MR. VAN WINKLE. I am sorry, Mr. President, to be again obliged to differ so widely from my friend from Kanawha. Without professing to be entirely accurate in my recollection yet it does appear to me that on every question which was to be settled here with regard to popular rights we have had that gentleman in opposition. I am not therefore very much surprised to find him there now, but I confess I am surprised to find any gentleman advocating a departure from a principle which he has sanctioned with his own vote. It was but a few days before the recess that this Convention solemnly adopted, not without due consideration and certainly with a knowledge of all the facts and circumstances that could apply to it as a fundamental principle to govern us—not only in the formation of this Constitution, but as citizens who were to live under it, that equality of rights was the fundamental principle upon which we build. I have, sir, on all occasions whenever a question has arisen here that seemed to refer to it at all I have with confidence appealed to this great principle of popular equality, believing that if gentlemen could see that if the principle did affect the case there was nothing further need be said on the occasion. Either, sir, we must be governed by principles and we must, in the language of Mr. Jefferson, whenever we are in doubt, take the principle and follow it as far as it will go, or else we must be arranging that which is to operate for a half century or something less and that which is to operate is to be settled upon the expediency of today. Sir, I assert the plainest dictates of commen-sense is against any such conclusion. The very counties that have been alluded to as having unequal representation under the present apportionment had a much more equal one when the apportionment was made; and, sir, if it were possible now to foresee what would be the population of these counties ten years hence, we might act upon that; we might anticipate, and still preserve our principle believing it would come right in the course of a few years. But I assert without fear of contradiction that if we look to the future, judging it by the past, the increase in the counties it is proposed to rob of their fair share of representation in order to give it to others not entitled to it, that the increase of those counties will be much more rapid than of those which are to receive the favor. If their increase was in the same ratio—that is if it bore the same per cent of their present population—the large counties will much soon-

er be entitled to an additional representative than the small ones, although the increase grow at the same rate of per cent on their population.

Now, sir, we have adopted and I hope it is not necessary to refresh the recollection of gentlemen—we have here solemnly affirmed by our previous votes, and unanimous vote, that every citizen of the State shall be entitled to equal representation in the government. And why not? Now, why not? Is there a principle of any other kind any other words or language recognized under our democratic institutions—I say is there another principle anywhere that is received in this country that is not in accordance strictly with that? Why, sir, the very principle on which we shook off our dependence on Great Britain was involved in that. The whole principle and fundamentals of our government, whatever it is, is based on this equity of citizens. Their rights are to be the same before the law; their privileges are to be the same; they are to be subjected to no restraints other than those that all other of their fellow-citizens are subject to. Surely this principle every man feels the value of preserving. Strike it out from your State, have your legislature go on and act under no law but their wills and the notions of the moment; give them no such restraint as this that the equity of all citizens is to be preserved, and where will you be? Designing men will rule you for their own purposes. And perhaps classes of citizens may find themselves completely ostracized or driven from any power or position in the government. There is no safety anywhere else for the people where that principle is not recognized and acted upon. Shall we found here a Russian despotism, where the citizens and subjects are nothing and the emperor everything? Shall we come down by degrees?

I have before me an excellent list of how and where to depart from principle when our State comes into view. I have before me a minority report of the Legislative Department and the apportionment of senatorial districts. When I find the gentleman from Kanawha has placed himself in one of 15,700, and placed my friend from Ohio in one of 18,000, and myself in one of 17,400, I am not inclined for one, to submit to any injustice of that kind, and so long as my voice can be heard here in rebuke of any attempt to render this representation unequal or depart from the principle recognized throughout the United States, upon which only representation should be founded—so long as my voice can be heard here so long will it be resisted; and if this injustice that is proposed shall be heard hereafter when this Constitution comes before the

people, I, sir, will not depart from these cherished principles of the whole people of this commonwealth, the new State. And what object would they have in acceding to your Constitution? Better, say they, to remain as we were, with a principle at least partially recognized than to come here and make a new State and go into it with the acknowledgment upon its face that there is not to be an equality of public rights and representation.

This rule, already adopted by this Convention, deliberately assented to by every member goes on to say:

"Every citizen of the State shall be entitled to equal representation in the government, and in all appointments of representation equality of numbers of those entitled thereto shall, as nearly as possible be preserved."

It anticipated the difficulty. It anticipated the fact that owing to the particular organization of the counties there would be one if we apportioned it strictly upon this population; but it gives you the only rule that can be given in reference to representation. When it must be departed from, depart from it as little as possible. If you were going through the woods and your path is obstructed and you have to leave it, you go no farther than you cannot help. But to repudiate, to knock it down, to throw it out entirely, as the proposition now pending would do, seems to me shows, at any rate either lack of judgment or want of reverence for the principle by which we ought to be governed—a principle which is the foundation stone of all our democratic government.

I am compelled to differ with my friend from Tyler also. I think he will find if he will examine into the subject strictly that every state of this Union in its representation in the lower house has adhered to the basis of population. The difference between us is very broad. He says none of the states—as making a positive assertion. I replied, not as making a positive assertion but as saying what I very sincerely believed, that every state has had regard to the population in making its apportionment of delegates in the lower house. I am unable to understand in any other way what we have so much talked of, about that being the popular branch. What does it mean? Why discriminate from the other house? Always as the "popular branch." If that does not mean that it is the house in which the people are represented? And can they be represented on any other principle than that of equality of numbers? Sir, the rule that has been adopted here has been taken from the Constitution of the United States. And there, sir, in the

grand exemplar, which is always before us for our study and government—aye, and for our practice and example—in that, sir, the popular branch is divided precisely according to the population, or as nearly as possible; and very near they manage to get to it, owing to the different arrangement of the states, they are much larger numbers. The principle upon which the fractions are disposed of is now the same, by a law of Congress; and, sir, it is but a few years ago—maybe fifteen or twenty—but within my recollection—that some of the states elected their members of the lower house by general ticket; and Congress almost unanimously then passed a law, as they had the right to do under the Constitution, that thereafter in every state in the Union members of the House of Representatives should be elected from single districts. They can contract their districts; they can direct the State to make an apportionment, giving the ratio. It is impossible for us to avoid some inequality because the numbers necessary to entitle to a representative are so much less. Our fractions bother us more than theirs do. But the rule is laid down in this report, which will come up presently; and the apportionment now before us that has been made is nearly the same as that adopted by Congress.

But to come back to the gentleman from Tyler, he speaks of the state with which he is most familiar—the State of New York, and he tells us that New York gives the representation in her lower house arbitrarily; that it is given to townships—

MR. SOPER. No, sir; I speak of eastern states.

MR. VAN WINKLE. I accept the correction. I might say of townships, that in some of these eastern states the townships are larger than some of our counties. But in reference to New York, I expect that if I am able to show that gentleman he is entirely mistaken—that New York adopts the same rule precisely we are endeavoring to adopt—that he will come over and vote with me. I have before me the statutes of New York, and lest it should be necessary for somebody to decide between us I will ask the Secretary to read:

The Secretary read a provision that "the members of the assembly shall be apportioned" among the counties "according to the number of their respective inhabitants," excluding aliens, etc.

MR. VAN WINKLE. They go a little further; and there comes in the joint township idea—the one I referred to—that if a county is entitled to two members in the legislature the county is divided

into two districts for the purposes of that election. That is undoubtedly what has misled the gentleman. But here then we have the principle recognized by the great State of New York, and I have no doubt by others. The principle is a plain one, and the question now is whether we shall depart further from that principle than is necessary and thereby do injustice to a great many. I have footed up the population of the five smallest counties. If they had anything near a fraction approaching to nearly one-half, I should not be at all tenacious. But the injustice they work from their diminutive numbers is so great that I cannot get my own consent to assent to it. I have footed up five counties that amount to 9286, or 1500 less than the population of Wood county; nearly as much less than that of Greenbrier; and yet still less than that of Monroe. To each of these you propose to give one delegate and then to give five delegates to these five counties with a population aggregating less than any one of these large counties. Now, gentlemen, be disposed as much as you will to favor these small counties, and I will go with you but are you prepared to neglect so far the interests of your own sections upon which you must rely for support whenever a contested question comes up and give to distant sections of the State—or your own even—this enormous inequality of representation? If you give to Wood and Greenbrier one, then fairly these counties ought to be entitled to only one-fifth. Instead of that, this plan gives them each one-half. Is not that generous enough under the circumstances; and can we be reproached if we deny them more than half a representative apiece? We do them no injustice. We are not speaking of trifling inequalities of population. These counties on a divisor of fifty-six hundred cannot show over one-third—the largest of them—and the lowest only one-fourth. Taking the divisor as the rule, then, these five counties would not be entitled to more than one and a half, and you propose to give them five. It may be all very well to pick out the big counties and try to diminish their lawful and equal power in the State, but I do not see what is to be gained by it. Their interests are always with the general interests of the State. The interests of Wheeling must be with the interests of the State when she becomes a part of it. You cannot separate on any grave question of that kind when it comes up. She must necessarily be with you because she is dependent on the State itself throughout almost all its ramifications for the support of her trade and manufactures. I hardly know a portion of this new State to which they are not sent.

Well, now, in reference to local questions. Is it not fair that a big county as well as a little one should have a fair share of representation in order that she may be truly represented in regard to local questions? But I am sure I need say no more, for if the argument made by my friend on my left (Mr. Lamb) in reference to the principle involved in this thing is satisfactory to this Convention, nothing I can say will make it so. But I should like to know whether it is intended to depart from principle wherever convenience or expediency dictates it. If so, I think we have mistaken the rule that should govern, and we will find ourselves much more at sea when we get through than we expect. But if we will adhere to principle as far as possible, and "whenever" as Jefferson says "we are in doubt, take the principle and carry it as far as it will go," the result of our labors must be in the end—at least when they are understood—satisfactory to our constituents. But going at random, doing this for one consideration and that for another, which are not general considerations—going at random and without rule—it is, sir, out of the question to expect that our labors will give satisfaction to those who have sent us here. If we adhere to the principles which they cherish—principles which they can easily understand—the application of which can be readily explained to them—we have always a defense, when we go back to them which they will appreciate. But if we say this was done on grounds of expediency, or to favor one section or another, or for any reason except a proper rule or principle just in its nature, depend on it those who are to pass on our work and are to be affected by it, will repudiate it in the end.

MR. SOPER. The gentleman has referred to a remark I made about representation under the Constitution of New York, that I have been conversant with. I know that recently New York has been divided off into separate districts. With a ratio of twenty thousand you will find counties with fifteen thousand entitled to a member, whereas a county with 50,000 or 40,000 would have but two. It is thus with counties that have more than one representative, that the county is divided into districts. Before that division was made every county in the state had a representative.

The gentleman remarks about designing men operating on small counties. I suppose he means these small counties representing but a small number of inhabitants and probably a smaller portion of the wealth of the community should not have the privilege of levying taxation burdens on populous and wealthy counties.

MR. VAN WINKLE. My allusion to "designing men" was this: I said if we establish arbitrary rules instead of rules based on principle, we put the whole State under the hands of designing men.

MR. SOPER. I want to say that there is no inequality here. I am speaking of the lower house where it is necessary that as full a representation should be made of all portions of the State and when the State is divided into counties that the representation ought to be according to counties, whereas it is based on population. The two houses constitute one body. It requires the acquiescence of both to pass a law; and there is the safety of the people. So far as it relates to the passage of acts it is on a fair representation of all the people. While the lower house has the representation of all the counties, the senate is to represent according to population. So there is safety in it, sir.

MR. STUART of Doddridge. My friend from the county of Wood; I must say to the gentleman to keep cool and be quiet; do not fret just now because others may have the same judgment in this matter the gentleman has. The gentleman seems to insinuate because some members of the Convention do not act in these premises just as he thinks we should, it is for a lack of judgment or a disposition to depart from principle. Keep quiet, my friend! Now, we may not have the same judgment as the gentleman from Wood has. It has been my fortune to go with the gentleman in some measures and oppose him in others. I always go with him when I think he is right and oppose him when I think he is wrong. And because we differ on questions, I do not like the imputation that we are disposed to act from personal motives or in violation of principle. But I think interest in this question will influence the action of some members of this Convention; but I am prepared to say that interest cannot influence me, because the county I represent cannot be affected by any apportionment proposed. The little county of Doddridge will have a representative any way you please. Then I stand here between you, rather, and look on this matter with impartiality and not a particle of interest. It does seem to me the gentlemen from Wood and Ohio look through this with rather partial glasses. I think interest is rather biasing their minds and leading them to the conclusion with slack judgment on this question.

Now, sir, I have been governed a great deal here by the figures of the gentleman from Ohio. He is very apt in this and I have

always been governed by his figures because he is the greatest hand to figure I ever saw in my life. I have not heretofore taken the trouble upon myself to go into this figure question; but, sirs, it seems to me now in taking the ratio which is 5637 that the gentleman from Ohio has divided the population of Ohio, as near as he could, by the number forty-six, and then wants all the rest of us to walk up to this ratio, and if it is favorable to Ohio, good; if it acts oppressively, let it go.

MR. LAMB. The gentleman is entirely mistaken. I divided the population by the number fifty-four—just exactly three times the number of the senate. I do not think it is a matter that Ohio is principally interested in.

MR. CALDWELL (in the chair). I do not understand the gentleman from Doddridge as giving way.

MR. STUART of Doddridge. I do not know how he got at his figures.

I am not departing from principle, as the gentleman from Wood seems to think I am, in making this amendment, because I am willing to take the report of the committee. If you depart from that number, you want then to be governed by reason and the necessity of the other counties. There seems to me some reason in it. Not merely that it gives the county of Wood and the county of Ohio another delegate, because they are already represented fully, amply and sufficiently. But if we depart from the representation of the committee, then I want to be governed by a principle and by a reason for my acts. Now, sir, it does strike me, although I was not willing to offer an amendment to the report of the committee, that every county here ought to be represented in some way distinctly and apart from the other counties. If we carry out the principle that is adopted in the Constitution of the United States where it gives all the small states equal representation in the Senate of the United States, then, sir, one of our bodies ought to be represented on a basis of that kind. It is not possible that a county here could be represented in the senate separate and distinct from another county. They are bound to be classified, to be formed into districts. Then the only way they can be so represented is in the house of delegates, giving to each county at least one delegate. That is the only way you can do it. That is carrying out a principle, it seems to me, and departing from that would be departing from a principle. Now, I must be permitted to say, in answer to the argument of the gentleman from Wood that al-

though this Convention may adopt the one principle or the other I will not feel myself so grieved that I will go before my people and oppose the adoption of the Constitution. I understood the threatening attitude of the gentleman, that that would be his course.

MR. VAN WINKLE. No, sir, if you please. I only said if they departed from principle. I did not say in this particular case.

MR. STUART of Doddridge. Now, sir, the ratio proposed in the amendment I seek to amend is 5637, the fraction is 2818. Let us see how this thing will apply. Then we can be governed by reason in the premises. We find that the county of Barbour has a fraction of 3082, Greenbrier 5754, Monroe 5589, Pleasants 2926, Raleigh 3291, Mason 3115, Ohio 5285, for which, of course, she gets a delegate. These counties will get under the amendment of the gentleman from Wood an additional delegate. Well, sir, that only lifts the disproportion off of one set and places it on another. If you depart from the report of the committee you simply take the inequality that that report makes from one set of counties and place it upon another. Jackson will have a fraction of 2063, which comes up nearly entitling her to a delegate. Here will be the county of Lewis, with a fraction of 2099, within a few of the number of Barbour. Barbour will get two under the amendment of the gentleman from Wood and the county of Lewis one. I only make these figures to show that you cannot adopt a principle here possibly but what it will operate against one county or the other. There is no principle that you can adopt but what you will be necessarily compelled to depart from that principle when you do make an allotment of delegates. Well, if you are not to stick to principle, if you are bound to depart from it, let us look to the interests of the whole and see that every county is represented. You cannot possibly stick to the principle. There is no way you can do it; and if principle must be stuck to and we are to look to nothing else, let us take the report of the committee without amending it at all, unless you want to give to Ohio four and Wood two to quiet her representative, and leave Lewis with one and give Barbour two; which makes as great inequality as any other apportionment you can possibly make. But, sir, the amendment of the gentleman from Wood proposes to increase the number of delegates eight over the number provided for in the committee's report. That increase would exactly give to the eight small counties which have no delegate, as they are placed in districts, one delegate each and leave

the rest of the apportionment exactly as prepared by the committee. The increase of eight that you now propose to make gives one delegate to each of those little counties, and does not change the allotment of delegates to the other counties. Ohio has two, Wood, two, Monongalia two, Marion two, Marshall two and Preston two. If you adopt the amendment you will get no more but throw the odd apportionment off one set and place it on another.

MR. POMEROY. I think this matter has been sufficiently discussed.

MR. HALL of Marion. I would insist, Mr. President, upon the gentleman from Hancock occupying the floor first, but from the remark he made it occurred to me he wished the discussion to cease. Like the gentleman from Wood, when I see it proposed to throw away a vital principle upon which we must act I cannot be silent. My people demand that I shall not be silent. I would like to know if it is proposed to establish west of the Allegheny mountains the Confederate counties of West Virginia? "Confederated" counties, I believe they call it down in Dixie—if the hills that the people live upon are proper subjects of representation—and it is nothing more nor less—it is absolutely proposed that you discard the idea of representing the people and representing the territory though it may be composed of but rocks and trees. No less than that has been proposed in the argument here this morning by some gentlemen who are anxious to gather up these little counties. I am somewhat like the gentleman from Wood, I do not feel very cool when it is proposed that if we cannot perfectly carry out a principle we shall discard it absolutely. I do not want to run into the opposition of my friend from Doddridge. He objects that his friend from Wood impugns the motives or intimates that there is any selfish motive, and then imputes selfish motives to him and to the gentleman from Ohio. I do not impute any motive to anybody, any selfish motive, beyond what the facts may disclose of themselves. I may say, as others have said, that whether you adopt this amendment—whether you adopt the one number of 54 or the other of 46, that it makes no difference at all with the counties I represent. It will not change the representation of my county. I believe I have just as much care for the small counties as any of the gentlemen who are so very anxious now to cast away this principle and that every one of them shall have a delegate. But whilst I have a care for them I would have upon a principle that will not bring upon us ruin. By discarding the very funda-

mental principles upon which we claim to be governed. If we are to adopt this suggestion, the idea as incorporated in the amendment of the gentleman from Doddridge, I must insist we amend the first section of this report. If there is any force in the argument they have urged for it, there is eminent propriety—an absolute necessity —that we amend the first section and say the legislature for our State shall be vested in two senates. We have a legislature? Why vote but the one body? If you are to have a house chosen upon the principle that they urge and argue in behalf of, why have a senate? All the arguments in behalf of arbitrary representation for these counties are founded on the very worst idea. They are not even dignified with the idea of states rights but of county rights, and it is even worse than secession. I do not want that we start from that point at all. It is argued that these small counties cannot be represented properly, that they are literally cut off from representation unless they have a representative from their own county; and that if they are associated in a district with a larger county, the larger county will overpower them and their interests never be looked to. In the first place I maintain this is not the fact. That will not be the effect of a county line running through the district. The line does not change the interests of those adjacent people. They are so situated that they have an identity of interest —a common interest; and in order to promote the one the representative will necessarily represent the interests of the other. I do not think these county lines are such extraordinary barriers. I have looked on enough to know that where they are thus situated, the little county will control the big county, in spite of itself. I have lived in a county where I have been acting with the minority for years, and while we could not get things just as we wanted them, we always got things just as our opponents did not want them. You start two men in a large county and they will, both want to be elected, because that is the object of being a candidate. They will compete in pledges to get the vote of the small county, and the man who best represents the little county, which holds the balance of power, will be elected. The little county will always elect the delegate. I ask any man who has looked on if that is invariably the fact?

Supposing that were not the case: I would not abandon this principle I would rather ascertain the ratio between the larger and the smaller and provide that the large county shall furnish the representative, say, for two years, the smaller for the third year, and so on. Before I would so use this principle, I would leave those

smaller counties absolutely without representation. I would turn them so out that they would be bound to come back into the larger counties. I would not violate a principle that would ruin them if I had even to resort to the other means of placing them under the necessity of attaching themselves to the larger counties. But my friend from Tyler (I believe it was) says we have nothing to do with the formation of these small counties heretofore; that we must take that as a fixed fact; that we must represent them. But he says we are now going to fix it so we cannot have any more of them. Well, now, I wonder if we are? Not by my vote, if these hills are to be represented against the people. No, sir. I would cut the county of Ohio, if need be, to give her a fair representation —and every other large county. I would have equality of rights if I had to cut them utterly into finger bits. Tell me that the people are not the subject of representation! Then throw away your idea of popular government! What is it you represent? I ask, sir, if it is not the industrial interests of the country that need to be represented? And you claim, that the territory—though scarcely inhabited, has the same interest in being represented that an active business commercial people have. I don't believe a word of it. I do not believe any other man believes it. I was surprised at my friend from Kanawha; and while I said I did not mean to impugn motives beyond what the facts would demonstrate, he will pardon me for referring to the action of this Convention on another question. You recall the question of boundary, and the gentleman's proposition there, and he fought manfully for the lower-end counties against the larger counties and talked about the balance of power. It does occur to me that this is upper-end balance of power. The gentleman is seeking by giving additional representatives over there to build the balance of power against this end of the State. Well, now, I am in favor of a balance of power; but I have observed it to work practically that there is but one safe rule and that is to work by principles that are known to be safe and right and not to depart from them for supposed hardships upon individuals or portions of the community, that may be, not imaginary but real for the time because times change. As was remarked by the gentleman from Kanawha, when making a constitution we make it to operate for all time, and not for a day.

I trust it will not be the pleasure of the Convention to adopt this amendment. If you do and send me back to my people, I tell you, sir, that I shall go before that people and tell them we have ignored the idea of representing the people, abandoned the great

principles that we have always clamored for. I tell you, sir, that I shall not go before my people and ask them to adopt our Constitution. I should be ashamed to ask them to adopt a principle that will destroy the very foundation principles of government. And I tell you I care not what I or other men might do, that people will not be ignorant of the fact that a vital principle in this thing has been discarded and cast away. We might very easily fix the thing up here. We might reconcile the thing to the minds and feelings of members of this body. We might say, well we are not going to be sticklers for this, that or the other and by compromising and all that sort of thing get a new state—all that sort of thing. But let me tell you this thing has to go through the mill before we can get there. When this thing is submitted to the people—all the people within the proposed territory of West Virginia are not going to vote on this question at all. You will find in some places there will be a power behind the voter greater than the voter himself. You will have incorporated into your Constitution a departure from the fundamental principles upon which our government is founded, and I will tell you that thing will be whispered into the ears of many men, who having had an opportunity to canvass and think of this thing, will act under the influence that may be brought to bear on them by persons who will not vote yea or nay on the question. We must look to this thing. We must build our tower so that it will be impregnable and so that we can go before our people and tell them it is safe, and wise and desirable. If we do not do this, we will find there are men who can point out all these things and those who may be influenced by it.

Now, it is objected—and I really cannot see the force of that—that because you cannot carry out this principle perfectly that therefore you must discard it entirely. What is the proposition here? You take the one or the other number, leaving out the idea of the amendment offered by the gentleman from Doddridge. What is it? You approximate. You adopt a principle and act on it and apply it as nearly as may be found practicable. That is all we can reasonably be expected to do. That is just what the people will demand of us, and they will demand that and no more. Are we going to yield to that demand? I trust we will. If I am to be told that the people are not entitled to be represented that is a remnant of old fogyism, and I want to go home. I do not want to be here to participate in the destruction of that principle and will not do it. I shall not promise what I shall do before my people on this Constitution if the fundamental principles are to be assailed and

destroyed for individual interest or caprice. I will not say to this Convention what I may do, because I do not want a new state without a government or with principles that will be destructive of every interest. I want a new state. I desire it as ardently and will forego as much, if it does not sacrifice principle, as any man. But I tell you we must not tear down the very foundations on which government must necessarily stand. They have set us an example over in the other end of the state of the destruction of all the principles of free government. I do not want that we shall follow it. I want that we shall stand on the sound principles that we will be able to vindicate before the people everywhere and throughout all time, and I tell you the people are not going to complain about it. Where there are districts made up of the different counties to be represented by the same men, I know there will be an imaginary difficulty with reference to that thing. I wish it could be avoided. I wish every county could be entitled to a representative; but I do insist, and I think upon reflection other gentlemen of this body will concur with me, that these difficulties exist more in imagination than in reality. In the application of a principle, such inequalities always must be, always will. It is more a disputation and controversy gotten up between aspirants than any diversity of interests of the people. Is it not so? And that they may make a noise about it. But where can you find two counties—call them a large and a small county—whose interests are rendered antagonistic or different by merely running a county line through them. You cannot do it.

I trust we will be governed by these principles, and will not depart from a cardinal principle, that is the very corner-stone of the foundation upon which we build, merely for the accommodation of these schemes and expedients which under pretext of avoiding a small evil would plunge us into much greater ones. Let us establish our representation upon just principles that have been acknowledged and endorsed, tried and found to be the proper principles; the principles that have been taught to our people; that they demand of us shall be carried out; shall be the foundation of the Constitution and government we present to them for approval. Let us stand by them, carry them out, and equalize as far as we can under that principle and not go outside of it. Just, sir, as we would not go outside of a constitution when we had it, for any of these minor considerations. Just so I would not go outside of a great principle in making a constitution. I trust it may be the pleasure of this Convention to adhere to this principle and vote

down the amendment and give an equal representation to our people.

MR. POMEROY. It is just about time to take a vote; and while I am the last man to cut off discussion, I think we ought to take a vote on the amendment; which will give us a new starting point after dinner.

MR. STEVENSON of Wood. I do not wish to speak; but I differ from my friend from Hancock. The question is of so much importance I think it would be better for the members of the Convention to eat on it and then come back and vote on it.

MR. BROWN of Kanawha. I rise for a personal explanation, sir. My acquaintance with my friend from Ohio—I hope yet to call him a friend—renders it impossible that he intended to be offensive in the remarks he made. I desire to understand distinctly whether he did so or not.

MR. LAMB. I am aware, sir, that in discussing questions here, I myself, as well as the gentleman from Kanawha, sometimes make arguments with too strong an expression. I do not—I did not—suppose the gentleman intended anything personal in regard to it; and I hope the same measure that I mete out will be meted out to me. I do not intend when I speak of the arguments of members that are advanced by them in strong terms—I do not intend any personal reflections. I hope I shall always have discretion enough to avoid them.

The hour for recess having arrived, the chair was vacated and the Convention took a recess.

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AFTERNOON SESSION

The Convention reassembled at the usual hour, President Hall in the chair.

MR. PAXTON. Mr. President, the Committee on Taxation and Finance have instructed me to present their report and to ask that it be laid on the table and printed.

Following is the report as presented:

REPORT

Of the Committee on Taxation and Finance.

(Submitted January 10, 1862.)

The Committee on Taxation and Finance respectfully submit the following provisions for incorporation into the Constitution of West Virginia:

1. Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. 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; but property for educational, literary, scientific, religious or charitable purposes, and public property, may, by law, be exempt from taxation.

2. A capitation tax, not less than fifty cents nor more than one dollar, shall be levied upon each white male inhabitant who has attained the age of twenty-one years.

3. The legislature shall provide for an annual tax, sufficient to defray the estimated expenses of the State for each year; and whenever the ordinary expenses of any year shall exceed the income, the legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such year.

4. No money shall be drawn from the treasury but in pursuance of appropriations made by law, and an accurate and detailed statement of the receipts and expenditures of the public money shall be published annually.

5. No debt shall be contracted by this State except to meet casual deficits in the revenue—to redeem a previous liability of the State—to suppress insurrection, repel invasion or defend the State in time of war.

6. The credit of the State shall not be granted to, or in aid of, any county, city, town, township, corporation or person whatever; nor shall the State ever assume or become responsible for the debts or liabilities of any county, city, town, township, corporation or person, unless incurred in time of war or insurrection for the benefit of the State.

7. No county, township, city, town or other municipal corporation, by vote of its citizens or otherwise, shall become a stockholder in any joint-stock company, corporation or association whatever; or raise money for, or loan its credit to, or aid of, any such company, corporation or association.

8. The legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations; but the proceeds of such sale shall be applied to the liquidation of the public debt; and hereafter the State shall not become a stockholder in any bank or other association or corporation.

9. An equitable portion of the public debt of the Commonwealth of Virginia prior to January 1st, 1861, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking-fund sufficient to pay the accruing interest and redeem the principal within thirty-four years.

J. W. PAXTON, Chairman.

THE PRESIDENT. It will be done as a matter of course.

When the Convention adjourned, it had under consideration the adoption of the amendment to the amendment. Is the Convention ready for the question?

MR. SOPER. I would suggest to wait a reasonable time until the gentlemen of the other house can get here before the vote is taken.

MR. VAN WINKLE. It is not quite half past three. We may as well wait.

MR. STEVENSON of Wood. Mr. President, I propose to occupy the few minutes that will intervene between now and the time those gentlemen come in. I think it my duty to say something on this question. I will, however, be as brief as possible.

I may say, in the outset, that I really cannot see so great a difference in point of argument between the two sides of the question as some gentlemen appear to see. But my mind seems to have settled upon this conviction after hearing the matter so ably discussed as it has been: that it is better, if we can discover a principle—and I think we have the principle in this report—that it will be better to adhere to the principle as near as possible. I am aware sir, that it is difficult—I suppose I may say it is impossible—to reduce any principle which is right in the abstract to practice strictly. But our duty, it seems to me, should be to adopt a principle and work as near it as possible. Because, there is such a thing as this, that when we have taken a departure from a principle we may in the process of a few years lose sight of it altogether.

Now, sir, I am willing to admit that the principle which seems to have been adopted here by this committee is liable to objection.

You will discover, sir, the gentlemen of the Convention will, in looking at the table which they have appended to their report that there are some sixteen districts, some of them made up of two counties, the balance of one, that fail to come up to the standard of 6618 of a white population, which is made the ratio of representation. Those counties having less than that number, some sixteen of them—or at least some sixteen districts that I have marked out—are still entitled to a delegate. Well, now, there is no great variation from principle there unless we take extreme cases. If we come down, for instance, to the county of Wirt, which is entitled to a delegate according to this report; it has a fraction of 3728—when we compare that with Greenbrier which has a population of 10,499, and is also entitled to but one delegate, there seems to be injustice done to that county. Well, there is probably at least an unfairness if not injustice; but that is an extreme view of the case. Most of the other counties contain fractions within a few hundred of the population that is required by the ratio which the committee have made out. It seems to me that it would hardly be possible to get nearer a correct principle upon which representation shall be based unless we increase the number, which, of course, will bring the fractions nearer to the ratio which representation should be based upon. At least it will render less inequality if we increase from 46 to 54. About that, however, I am not so very particular.

Now, sir, if we are to adopt this plan of giving one delegate to every county—and I must confess it struck me first as a very fair proposition—and if it was possible without violating this principle or endangering its violation hereafter to adopt an amendment of that character—I would certainly favor it. But let us look how it will operate, sir. The very principle—the reason why you have a representation in the legislature—the very reason why districts are allowed to elect delegates to represent them—in a law-making body is not only that the great public necessities of the State require that representation but more especially because there are local interests to be attended to and to be put, if it can be done, in charge of the delegate from the particular locality. That is one of the principal reasons—probably the great one why we cut up our State into districts and allow those districts to be represented, because there are particular local interests which pertain to that region that it would be impossible to legislate upon fairly, justly and equitably unless the district was allowed a representative. At least, to some extent. Now, sir, this brings me to consider what appears to be

an unfairness in that quarter, and I have admitted there appears to be something like an unfairness in the other. Now, let me give you this example. Here are the counties of Tucker, which has a population of 1396, Calhoun, Clay, Webster, and McDowell, combined their population is 8736. Now, sir, they have, according to the amendment of the gentleman from Doddridge, they are to have five delegates. Here, for example, and I only give it as an example —Greenbrier, with between ten and eleven thousand. Now, you give five delegates here to a population of 8756 and you give but one delegate to a county which has a population of nearly 11,000. Now, then, for the practical working of that thing. Suppose this county of Greenbrier has some question of vital importance to the people of that county brought up in the legislature; and any member of the Convention can imagine to himself a hundred cases where questions of vital importance can come up in which every county in this new State will be interested—but here comes up such a measure of this county. Well, now, don't you see, sir, that if the circumstances should be such as to make it necessary for these counties—Tucker, Calhoun, Clay, Webster and McDowell, to oppose Greenbrier, that they may have power enough in those five delegates to defeat that measure and thus effectually destroy the interests of the people in that county, which they could not have done had the representation been based on the principle of a proper ratio, or something like it, as given by the committee. It seems to me there is an important principle to be found in the report of the committee which the amendment proposed by the gentleman appears at least to some extent, to be a departure from.

Let me say one word in reference to how this matter will act on the smaller counties, where the operation of the report of the committee appears to act harshly or unjustly. I supposed when I first looked into this report—for I did not examine it very particularly—that some five or six counties were to be left without representation; but I find that is not the case. I find in the fifth section a provision is made that where the population is not sufficient to entitle the county to a representative exclusively it shall be attached to contiguous territory and that the person shall not only be the representative of that contiguous territory but of this district whose population does not reach the requisite amount to have a delegate of their own.

Now, I deny here that as a general thing, or at least so frequently as has been asserted, larger districts in such cases are likely to swallow up or destroy communities of the smaller ones in

this matter of representation. I am willing to admit that will sometimes occur. It may frequently; but I do say that in the small districts, in consequence of the balance of power which they hold, and in consequence of combinations which they make, with parties in the other or larger districts, they have the means in their power to retaliate and checkmate the larger districts and prevent any long-continued injustice. It operates so in the congressional districts where large and populous counties are connected, with small ones. As a general thing there is a good deal of rivalry; yet the smaller counties, through their power to combine against the larger, generally control the representation of the district, and generally have their share—sometimes more than their share. From my own observations I am led to believe the representation is generally tolerably equalized between them.

I wish to make another remark here, that I have no particular feeling, or do not intend to allow myself to entertain any, beyond what is proper on this or any other question; but I say that I am willing myself—I have so much faith in the wisdom and good sense of this Convention—I am so desirous of getting this new State—I am so desirous of being cut loose from that nest of traitors east of the Blue Ridge—that I am willing to pledge myself almost in advance to go for any constitution that this Convention may adopt. And I hope, sir, that that will be the declaration of others; and I will add to this, because it has been intimated here once or twice that unless we can carry some particular views of ours into this Constitution and have them endorsed by the Convention, we will throw cold water on the Constitution after it is adopted. I hope no such a sentiment will prevail. For I take it Lot might just as well have looked back at Sodom and Gomorrah as for the people of this new State to look back now and ever expect or hope or desire to be reunited to Richmond and eastern Virginia.

MR. BROWN of Kanawha. I desire to say one word—I yield to the gentleman from Marion.

MR. HALL of Marion. Mr. President, I wish to say, having made the remark which may have been understood—I think it should not have been understood—as a threat, I wish to say some remark was made as to the effect that the discarding of cardinal principles would have; what men might be driven to do—and I meant only to say that I would not and could not pledge myself in advance to go before my people and support anything that might be gotten up here if there was to be an abandonment of the cardinal

principle which constituted the foundation of our government. I hope I was not understood as using any remark in the way of threatening or anything of the sort. I meant only to say that we must so act that we could get support both here and at home and that our people would support. I do not design to commit myself now pro or con on the Constitution we shall make; but when we get through, I shall very soon intimate to you what I shall do individually.

MR. BROWN of Kanawha. Mr. President, the course of the remarks of the gentlemen who seemed to consider themselves par excellence the advocates of principle has seemed to be as if there were any one controverting their argument. I desire to be understood distinctly that I profess to stand on that principle as well as any gentleman in this house. I intend to enumerate and meet the arguments of gentlemen in defence of principle. I do not think it requisite to argue in defence of the principle of equality of representation based on population. That has been adopted, and one gentleman did me the honor to read from the report the committee had adopted and I believe called to my attention the fact that if I did not move the resolution at least I voted for it—the amendment that representation should be in proportion to population as far as possible. I may not quote the precise language. Well, now, sir, I maintain that doctrine yet. And I hold these gentlemen while they are struggling in this very case are doing the same thing. When a gentleman argues to this house that we should adopt this proposition here, repudiate the representation of counties and charge that all those who support the representation of various counties—not directly, that is inferential from the argument—that we are violating and opposing that principle, are opposed to it and opposing the doctrine. I do not understand it so, no more than the gentlemen who advocate this very proposition of apportioning here on fractions of counties. Why, sir, if you attempt to follow the principle thus laid down in this report on fundamental provisions, then we have no alternative but to apportion the country by hundreds or thousands into districts that will exactly meet the case, because it is perfectly possible; it is only a little inconvenience. Whenever you say the principle is to be carried out—and these gentlemen would not depart a hair's breadth to save the Constitution or the country, yet the very moment they attempt to apply it they depart from the principle in every particular in every county within the whole State.

Now, I say if that is any principle and it is to be adhered to and over-ride every other consideration, carry it out, for there is no difficulty in the way of it; because none of you understood the vote in this house in pledging this house to sustain that principle over every other consideration. In the language of the gentleman from Wood, when we in following this principle find ourselves trammeled with difficulties or inequalities in the counties, desiring to carry out the fundamental principle consistent with another principle to secure each of these counties a delegate if possible, or if it be reasonable, it is no violation of principle, no more in the one case than in the other.

Now, then, this argument on this proposition that the gentlemen who are advocating this principle are exclusively the advocates of principle, I maintain to be incorrect. Why, one gentleman, the gentleman last on the floor was so strong an advocate of standing by principle that before he would sacrifice this principle, which seemed in his view the principle on which the whole republic was based and if sacrificed would bring absolute ruin on the country—how? In simply giving a delegate to a county—that before he would sacrifice this principle he would disfranchise the county. Does that maintain the principle? A principle which asserts that every person in the country shall be represented is to be maintained by sacrificing a whole county of individuals. It seems to me as forcible as another illustration the gentleman gave of the case of two counties in one district. He tried to make it appear that in such cases the small county would control the larger. The argument cuts its own throat. If it had the operation he contends, according to the doctrine he maintains, could never advocate any such plan. It is urged we have been advocating another principle, of keeping up equality between the sections of the State in the political power between the two ends of the State. So we have. That has been my determination from the beginning and it will be to the end, to maintain that right if I can. I say further that whenever a people absolutely surrender that right they surrender their liberties. That is one of the things we have been contending against in the east all the time. I put it to the gentlemen, why do you exclude the counties that lie at our end of the State? Why, lest they might come together in order that they might keep up the balance of power with us. We are apportioning the delegates between these portions of the State. We find ourselves now in the minority with three-fourths of the territory—a minority of the people. The question is to distribute these delegates. The gentle-

men tell us they are such advocates of principle they would not sacrifice it on any consideration whatever. Let us see how the gentlemen propose to carry out their principle. Let them take up my supplementary report and show how it will operate in the report proposed. The counties of Harrison and Kanawha from which the delegate comes are given one senator each, while a much larger section of country from other counties has only one. I wish to say in justification of myself and explanation of that apportionment of representation that finding some inequalities in the report of the committee, I undertook as far as I could to remedy it. I stated there the principles on which I endeavored to do it to secure equality as one idea. Another was to group people according to their social and business relations and balance the political power in the two sections of the State. And thus I have begun at one end of the State and formed one district as near as I could get it and as near as they have got it; and then I went to the other end and endeavored to form another senatorial district at the extreme end precisely the same size as nearly as it could be done. And so on, back and forth, endeavoring every time that the two districts should correspond in size, equality and components; and I find myself, sir, with the counties of Harrison and Kanawha, which are difficult to add to either of the adjacent counties left alone. I found also in the Winchester district (the county of Frederick) —another large county I could add them to another senatorial district around without derangement, to elect them as near as possible in the two or three distinct sections of the State so that equality would be kept up in the various sections. We have the first district, Hancock, Brooke and Ohio, with 32,063; at the other end of the State, Cabell, Wayne, Boone, Logan, Wyoming, Raleigh and McDowell, 31,382. The next is 39,131 at the north end.

MR. STUART of Doddridge. I must arise to a question of order. The apportionment of senatorial districts is not the question before the house.

Mr. Brown of Kanawha, endeavoring to show that those who contend for principles are no more its friends in carrying it into execution than we are.

THE PRESIDENT. The Chair is aware that there has been a good deal of discussion that did not legitimately belong to the question before the Convention; but the question of fairness has been up several times, and though it was not expected to be introduced

to the extent it was, if the Chair could have foreseen the latitude the discussion would take, it would have been stopped in advance. The gentlemen have gone so far the Chair is of opinion it would be hardly right to prevent a fair argument of the question. The Chair would certainly prevent any unkind remarks. The gentleman can proceed with his argument.

MR. BROWN of Kanawha. I have no wish, sir, to be unfair to any gentleman. I presume we are all here representing our constituency and endeavoring to form a Constitution for the government of our people in which we all have the same common interest; and I presume we are all actuated by common motives of patriotism in the accomplishment of this object to the very best we can do, and that we are at the same time all under the influence of our peculiar, partial and local feelings and interests, to see that they are particularly cared for and our interests and rights preserved in this Constitution. I do not attach any kind of blame to any gentleman for differing with me, and do not desire to reflect upon any gentleman's motives. The motive I presume is that a man is biased by what his interests seem to require; and I have no doubt I am under the influence of it as much as any other members if not more so. I am now replying to the arguments of gentlemen which seem to indicate that we were peculiarly under this influence and I wish to show that while they are throwing stones at their neighbors, there are beams in their own. I proposed, then a system of senatorial districts to carry out this principle, and I only use it as an illustration of his own principle. He proposes to give to the north end of the State three senatorial districts, every one of which is too small and to give to the south end every one of which, one after the other is too large. And now I ask the gentleman how he can ever stand up here and say that we are the parties that are abandoning principle and they are par excellence the one to maintain it.

MR. VAN WINKLE. I wish to call the gentleman's attention to the fact that the smallest of these senatorial districts is only 1700 under the ratio and the largest 700 over.

MR. BROWN of Kanawha. I will admit that it is difficult to arrange this matter; but when you go to one end of the State and find your first district too small and find the other end too large, you might make your next larger and the next smaller at the other end instead of making them all too large. If you will, by going

back and forth you can rectify the evil. I find no difficulty in the plan I proposed. There is a fundamental principle at the bottom of this I think. We have had the indication continually in this Convention that the subject of railroads—that is, large corporations here in the new State are to be put down.

THE PRESIDENT. In permitting the reply to the allusions that have been made heretofore on the subject of senatorial districts, the Chair would not be willing to have a new subject or charge brought in against the other party and would insist that the delegate confine himself to the original argument.

MR. BROWN of Kanawha. If I understand the argument of the gentleman from Wood it was an allusion—I may have misapprehended the gentleman—that one of the considerations against extending this franchise, or this privilege, to the various small counties is that they will be the counties who will be clamoring for the aid of the State for works of internal improvements—for railroads and turnpikes and all these things that you must ask the aid of the public for or you may never get them at all. Well, now, I wish to look at the history and condition of the country to see if there are not peculiar reasons why gentlemen should advocate with so much zeal that doctrine of restraining us from the public crib. You find large portions of our section of the State have received no advantages. We find this section of the State that has the population—the small section containing the political power of the State—with railroads running through it. They did not come out of the state treasury, I admit, but they got it, and by reason of the railroads these counties have grown rich and populous. Now they have got the whole power of the State in their hands and the proposal is to keep it there. Now, here are other counties that need some aid; and the question is, will you adopt a system that will attach those counties to each of the larger ones and put them in their control? I oppose; I vote not. I do not represent a small county but I feel a great interest in the whole section of the country I represent and represent the feeling and interest and sympathy that pervades the whole section of country—far stronger than the small trifle of obtaining one delegate more in my county. Because we have a common interest. I know that these small counties, as well as many others, will have wants at the hands of the public that they must receive or be shut out forever, and that their growth in any great degree is to depend on the legislation of the State. They therefore have a very deep interest in it. Those

that have profited—that are strong already—have nothing to fear. And therefore it is I say that this section of country has a peculiar interest in this subject; and while, as the gentleman informs me—and in looking over it I believe it is correct—that by this proposition it may be arranged to compensate in my section of the State for the inequality that is acknowledged to exist on the face of the report. I prefer to stand on this simple doctrine of simplicity of representation in each county as far as it can be had and then apply the general principle of equality in adding the additional delegates to all the other counties. It seems to me therefore, Mr. President, that we on this subject no more depart from the principle than the gentlemen on the other side—the fundamental principle that where there is not something to control your action you shall stick to the equality of the report, but that where a reasonable impossibility exists—of a physical impossibility, you shall apply another principle if it compensates fully.

MR. LAMB. I regret exceedingly that this matter of senatorial representation is unnecessarily brought into this discussion. It was unnecessary entirely to encumber the present question with any reference to questions of that character. But, sir, I am not willing that this Convention should be suffered to remain under an impression such as has been sought to be conveyed by the speech of the gentleman from Kanawha. The argument which he has made, and which the Chair has decided in order, must necessarily lead to the investigation of that subject, little as it has connection with the subject before this Convention.

THE PRESIDENT. The Chair did not suppose the matter properly in order, but it got by degrees before the Convention—it had been so frequently alluded to—that the Chair felt constrained to some extent to allow it.

MR. LAMB. I take it it is now in order to bring up the whole subject, and let us see if these inequalities—inequalities purposely made, as the gentleman insists—do exist in the senatorial apportionment.

MR. STUART of Doddridge. I have to rise to a question of order. It seems to me the question is between the gentleman from Wood and the gentleman from Kanawha, and they have combatted each other; and I do hope we will not go into a discussion now on that question, but will discuss the amendment to the amendment

as proposed. I hope the Chair will rule it out, and if he does not I will take an appeal from the decision of the Chair.

MR. POMEROY. As I am on the other side, I hope the gentleman from Ohio will not press making his speech now. I hope the Chair will . . .

MR. LAMB. It strikes me . . .

MR. STUART of Doddridge. I want the question settled, sir.

MR. LAMB. The gentleman ought to have raised his point of order when the representation made on this subject was . . .

MR. STUART of Doddridge. I have a perfect right to raise the point. I rise to a question of order.

MR. LAMB. Then it is in order to impugn the report of the committee and it is not in order to reply. I think the whole remarks are out of order on both sides.

THE PRESIDENT. The Chair will take the sense of the house.

MR. VAN WINKLE. I contend this debate is strictly in order. I call for the point of order in writing.

MR. STUART of Doddridge. I can soon state my point of order. I will reduce it to writing.

MR. HALL of Marion. Allow me, in the interim, again to say that the gentleman from Kanawha did not purposely misrepresent my argument; but as I conceive did very much misrepresent me upon the point of the balance of power, representing that my argument tended necessarily to show that the little counties' power over the big ones was unjust to the latter. That was not my argument. I said distinctly that the balance of power held by the small county prevented the great populous county from controlling by throwing its vote to one or the other candidates compelling them to give fair terms to the small county.

THE PRESIDENT. The Chair would remark that there is nothing before the house at present.

MR. LAMB. I am certainly entitled to the floor.

MR. VAN WINKLE. When you are called to order, you must take your seat (Merriment)!

THE PRESIDENT. TAKE YOUR SEATS, gentlemen.

MR. POMEROY. I would like to pour oil on these troubled waters and say that before the point is decided we would all feel it was decided right and go on harmoniously.

MR. STEVENSON of Wood. Is that what you call "oil?"

MR. POMEROY. Yes.

THE PRESIDENT. The gentleman from Ohio will proceed, then.

MR. LAMB. The gentleman from Kanawha announces at length what he has not done before, his adhesion to this principle that every citizen of the State shall be entitled to equal representation, that "in all apportionments of representation, equality of numbers of those entitled thereto shall as far as possible be preserved." But he is somewhat late, it strikes me, in announcing now his adhesion to this principle, for his arguments heretofore sounded to me more like arguments that this principle was of no account and that nobody need attempt to preserve it; that it was a principle that was not observed in any case, but was here as a mere idle provision to be violated whenever we came to apply it in practice. But he has at least admitted.

Now, let us see how near the senatorial apportionment, which he impugns, approaches this principle. This principle does not require a precise equality in all respects. As expressed here it admits that an exact equality is impossible. But the rule is, we are to approach equality as "nearly as possible." How near we can approach it in the senatorial districts is to be ascertained, perhaps, and the only mode of ascertaining that it exists is to compare one apportionment which is proposed with another. The gentleman in conformity with the principle which he now admits, has submitted his apportionment of the senatorial districts, and the committee has submitted theirs. If we wish to ascertain whether the apportionment of the committee is in conformity with this principle as near as possible, it is certainly a fair test upon that question to see whether the gentleman's own apportionment is an improvement in reference to the principle we adopt in common.

Now, in the apportionment of senatorial districts which the committee have suggested, the severest test possible in any case of that kind is to take all the small districts and put them together and then take all the large districts and put them together. You cannot subject an apportionment to any severer test.

There are nine senatorial districts reported here by the committee. You have to take four upon one side—the four largest,

and four upon the other. Take the four largest and the four smallest, and the difference between the whole is 6200—precisely 6201. Is this approaching to the principle as near as possible? Let us see what the gentleman has worked out. Take the largest districts the gentleman asks us to adopt here for a senatorial apportionment, on the one side and the smallest on the other, and the difference is just 50,000. Now I can at least say we have come a little nearer to this principle, which we adopt in common, than the gentleman has.

The gentleman remarks particularly and impressively upon the fact that take one district from one end of the State and another from the other end and there is a difference of over two thousand between these two districts in the apportionment reported by the committee. How does that stand on the gentleman's report? Why there are no less than sixteen districts in the report of the gentleman the differences between which exceed two thousand. If you adopt nine senatorial districts for a population of 304,433, the ratio is one district for every 33,825. Compared with this ratio there is no district reported by the committee which does not amount to within 1760 of that ratio. There is no excess reported by the committee which exceeds 750. All the deficiencies in the report of the committee amount to 3739; the whole surplus 3747.

Now, how is this in the report with which I am comparing? Why, gentlemen, the difference between two of these districts is over 7600. The whole deficiencies in the report of the committee, added to the whole excesses, do not amount to as much as the difference between two of the districts which the gentleman has reported. But not only those two, take another two, and the difference is 7000. Take still another two and the difference is 6500, and so on.

That is the apportionment which the gentleman impugns as departing from our principle, which he contends is not only unequal; but he has at least intimated that this inequality was for the purpose of accomplishing some covert object with reference to railroads, or something of that kind. That gentleman has tried his hand at working out this apportionment, and he knows it is impossible to approach nearer to the principle than the committee have done in the senatorial apportionments, if the gentleman would figure at it every minute to the end of this year.

And yet the intimation is given to the Convention that these slight inequalities—slight and trifling as they are—must have been adopted for the purpose of securing an undue influence of one sec-

tion of the State over another—with a view of accomplishing some purpose with reference to railroads!

MR. BROWN of Kanawha. I certainly did not intimate at all or intend to—that there was any sinister motive, but expressly stated that I supposed these gentlemen, like myself, were influenced by partialities; that when they could not get the desired equalities, their partialities were on one side and mine on the other.

MR. LAMB. I accept the gentleman's explanation with a great deal of pleasure, but I must insist upon it that after the gentleman has tried—as I know he has done—to make a better and more equal apportionment, one more in conformity with the principle which he now admits, that he ought in common candor to have admitted that it was impossible to come any nearer than the committee had done. Now, I know that to be the fact. For I have been figuring at this until my head ached; and the apportionment of the committee far more nearly approaches the grand principle for which we are here contending than any other I could possibly devise. I would see some objections; thought I could improve some difficulties; tried my hand over, and over, and over again; but though I could get one district, I would spoil three or four others. I never could work it through with anything like the equality that is presented in this plan of apportionment. There are other gentlemen of the Convention who have tried their hands on these matters. I must insist that because these trifling inequalities exist, the imputation on the committee in that respect is entirely unfounded. I accept with pleasure the explanation of the gentleman that he did not intend to impute to the committee any purpose in shaping their report any of these ulterior objects for it is certainly not the case.

I wish, however, in more immediate connection with what I regard the only subject here in order to make an explanation in regard to the operation of the amendment offered by the gentleman from Wood, as compared with the other propositions now before the house in regard to the apportionment of the house of delegates.

In the first place, the Convention must bear in mind in the consideration of this subject the other provisions in the report of the committee. Whenever one of these small counties shall appear in that apportionment of representation to have a population equal to one-half the ratio which would entitle it to a representative, it becomes, on the plan reported by the committee entitled to a delegate. This is certainly greatly in favor of the small counties. As soon as their population reaches one-half the amount to entitle them

to a delegate, they are allowed a full delegate. This then lies at the foundation of the matter in regard to the small counties; and there is no application of the principle then to the small counties unless their population is below one-half of the ratio. Then the provision is that if the population of a county is below one-half the ratio, it shall be, for the purpose of electing delegates annexed to some adjoining county in order to make up something like a fair ground to entitle a certain district of country to a delegate.

Now as to the conformity with this principle of apportionment which has been announced in our fundamental provisions, does it not approach much nearer than anything else that has been suggested to this Convention to an apportionment as near as possible according to population? I stated here when the subject was introduced that if you adopt the house of 54, there will be no fraction unrepresented exceeding 2100. You approach at least within 2100 of a precise apportionment of representation in the extremest case; and then I take it, from the trials I have given to this subject, from the working out of the apportionment with one number and another, I think that this is, in fact, as near as it is possible to apportion representation among these counties according to population. If you adopt the motion of the gentleman from Doddridge, you give Tucker a delegate although she is 4300 off from the ratio. Compare the one case with the other. Compare it with the principle you have adopted, which now seems to be admitted. One is making apportionment as near as possible according to the white population; the other is certainly violating that principle; and it violates it throughout. Compare your number 54 with 46. With 54 you have no excess exceeding 2100; with 46 you have excesses of 3800, 2900 and 2300, and so on. Now, if your principle means anything it is that the apportionment shall be as nearly as possible in proportion to white population. If—and there is no doubt whatever in regard to it for it is a matter of simple figures—the number 54 enables you to make a much nearer apportionment; a much nearer approach to the exact proportion in regard to population than the number 46, this is still much nearer than the motion of the gentleman from Doddridge.

I need not refer to the calculation submitted by the other gentleman from Wood (Stevenson). The five smallest counties, each of which have a number less than one-half of what would entitle a county to a delegate, it is proposed by the gentleman from Doddridge shall each have a delegate, thus giving five delegates for a population of 8736. Mason county—not to quote an extreme case

—has a population of 8752; and she becomes to one delegate also. Now, in this favored section of the country, one man, in these counties, counts exactly as much as five men in Mason. The Constitution of the United State allows five negroes to count as much as three white men; but five men in Mason county only count as much as one man in Tucker.

Now, Mr. President, go home to your constituents and tell them that you have adopted an expedient here by which a man in Mason is to be rated as but one-third of a negro, and see if you do not have votes against your Constitution. Am I going to my constituents and tell them that a man in Ohio county is to count as much as one-third of a negro and expect them to vote for this Constitution. No, sir; No, sir! I came here intending to adopt a constitution; intending, and I have labored only and zealously for the purpose of preparing it based upon proper principles, and which I could tell my constituents is a constitution worthy of their acceptance; and I hope—I do hope—that this Convention when it adjourns will enable me to present a constitution framed by it for their acceptance, with such a declaration. It can only be because a constitution is formed upon fair and acknowledged principles. It cannot be so if a constitution is passed on principles which violate the very fundamentals of republican government.

MR. STUART of Doddridge. Will the Clerk report the amendment to the amendment. I am not advised where that amendment comes in.

The Secretary reported that the motion was to insert at the end of the first sentence of Section 2 the words: "and be so distributed as to give each county at least one delegate."

MR. VAN WINKLE. At the amendment. My amendment is to substitute 54 for 46.

On the adoption of Mr. Stuart's motion, Mr. Brown of Preston asked for the yeas and nays.

The roll was called and the vote resulted as follows:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Brumfield, Dering, Dolly, Hansley, Haymond, Harrison, Hubbs, Hervey, Montague, Parsons, Simmons, Stephenson of Clay, Sheets, Soper, Stuart of Doddridge, Taylor, Walker, Wilson—20.

NAYS—Messrs. Brown of Preston, Brooks, Chapman, Caldwell, Carskadon, Dille, Hall of Marion, Irvine, Lamb, Mahon, O'Brien, Powell, Parker, Paxton, Pomeroy, Robinson, Ruffner, Sinsel, Stevenson of Wood, Stewart of Wirt, Trainer, Van Winkle, Warder—23.

The question then recurred upon the adoption of the amendment of Mr. Van Winkle, to strike out "forty-six" and insert "fifty-four;" and upon this question the yeas and nays were demanded, which being sustained the amendment was rejected—yeas 14, nays 29.

And on motion of Mr. Hervey, the vote was recorded as follows:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Carskadon, Dering, Hubbs, Lamb, Mahon, Paxton, Ruffner, Stevenson of Wood, Soper, Stuart of Doddridge, Van Winkle, Walker—14.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Chapman, Caldwell, Dille, Dolly, Hansley, Hall of Marion, Haymond, Harrison, Hervey, Irvine, Montague, O'Brien, Parsons, Powell, Parker, Pomeroy, Robinson, Sinsel, Simmons, Stephenson of Clay, Stewart of Wirt, Sheets, Taylor, Trainer, Warder, Wilson—29.

MR. LAMB. I may hope now that I can occupy what the gentleman from Doddridge seems to regard as my proper place in defending the report of the committee hereafter. I move the adoption of the first clause: "The senate shall be composed of eighteen and the house of delegates of forty-six members."

The motion was agreed to and the clause adopted.

MR. VAN WINKLE. Mr. President, in reference to the peculiar circumstances in which we are placed, I move the introduction of a clause here that at one time I thought, and probably the committee thought, would be more proper in the schedule. But I believe, under the circumstances, it had better be incorporated in the body of the Constitution. I want to move to add after the close of the period in the tenth line: "except that the terms of those first elected shall commence twenty days after their election," with a view of following it in the proper place with this: that of the senators first elected, one from each senatorial district, to be determined by lot in the presence of the senate, shall serve until the..... day of..... ..... in the year 186*3*, and the other to the same day in 1864. The delegates first elected shall serve to the same day in 1863. A question here arises which may turn me from my purpose. Well, then, we do not know at what time we shall be able to hold an election

for delegates or to put this new State into operation, supposing we get through Congress happily. If Congress should admit us say by the first of June, then we could go on and elect. Of course, the terms of those members would not commence until the first day of October. I wish . . .

MR. LAMB. This section was amended by inserting fourth of July instead of October first.

MR. VAN WINKLE. I had forgotten that.

MR. STEVENSON of Wood. It was your own motion.

MR. LAMB. The section now reads that the term of office shall commence, both for senators and delegates on the fourth day of July next succeeding their election.

MR. VAN WINKLE. Well, that makes it just as necessary. We will not be able to go through Congress until after the fourth of July, and then it would have to go over until the next fourth. I think for safety they had better go over. I understand the chairman of the committee approves it. To avoid any mistake hereafter, better here than in the schedule. The amendment is:

"Except that the terms of those first elected shall commence twenty days after their election."

It will take that time to get in the returns. I propose to follow that by this other that I read when we come to the proper place for that, wherever it may be, but fixing the close of the terms. It would be now say two years for senators from the fourth of July next and for delegates one year from same date. So that whenever that election takes place the terms will close as if they had been elected previous to the fourth of July next, in order that we may have a guide from which to go regularly. It is a mere matter of regulation. I apprehend the Convention will see the necessity of making the provision. It must be made either here or in the schedule; and it had better be in the Constitution itself.

At the request of Mr. Hervey, the Secretary read the section as amended.

MR. BROWN of Kanawha. I see the propriety, I did not catch it at first, for some provision of the kind. But it seems to me it would be much more appropriate in the schedule and let the Constitution fix the day. The 4th of July is fixed for the commencement. If we should elect after the 4th of July, of course it

would be the next 4th before they would take office. To put it into operation, it seems to me the schedule would be the proper place.

MR. VAN WINKLE. My difficulty about that was that the schedule would then override the Constitution, and it struck me that matters of that kind ought not to go into the schedule. It is a matter, of course not exactly of taste, but upon which there may be a very wide difference of opinion, I admit.

MR. BROWN of Kanawha. The schedule to a Constitution is always a part and parcel of it for putting it into operation. It is adopted by the people. There can be no want of validity in it.

MR. LAMB. It certainly would be proper to have a provision of this kind somewheres in the Constitution or schedule; and I suppose whether it is put here into the Constitution, or into the schedule, that when the matter comes before the Committee of Revision they have full authority to arrange the different motions and provisions in their proper places. I mention this in order that we may have some understanding as to what may be the duties of that committee. I take it they have full authority over the arrangement at least, of the different provisions which the Convention have adopted. It strikes me that as the provision which is suggested is an exception to the clause which is here reported by the committee, perhaps the proper place would be to let it follow immediately after the clause to which it does constitute an exception. It is the simplest way of expressing it.

The question was taken on the amendment offered by Mr. Van Winkle, and it was agreed to.

The question recurred on the remainder of the section.

MR. HERVEY. I presume it would be in order to amend it still further. I feel disposed to test the sense of the Convention as to the time of the election again.

THE PRESIDENT. Will the gentleman state the particular amendment he had reference to.

MR. HERVEY. Perhaps it might be in order to make the motion at this time.

MR. VAN WINKLE. It would not be strictly in order because the day was changed after an attempt to change it had failed; but after that we fixed some late day, the third Tuesday I believe, in January for the commencement of the session.

The object of the inquiry of the Chair, was, whether the gentleman had reference to the term of years.

MR. HERVEY. I apprehend it would be in order when the question comes up on the adoption of the whole report.

MR. VAN WINKLE. We did something with this section and then passed from it believing the subject was not ripe for action. Whether the Convention would under those circumstances be inclined to hold us to the strict rule not to offer any amendment until the whole report comes up, it strikes me this needs amendment. It had better be amended now, and go on as if it had not been acted on.

MR. POMEROY. I think gentlemen are willing to make a reconsideration.

MR. LAMB. No part of this section was adopted. Certain amendments were adopted and certain others proposed and rejected; but the Convention passed over the section without adopting any part of it. Such is the memorandum which I have made from the journal.

THE PRESIDENT. Taken to-day?

MR. LAMB. No, sir; before the recess.

THE PRESIDENT. That agrees with the recollection of the Chair.

MR. LAMB. We acted on certain amendments, and then having adopted some of these amendments and rejected others, we passed by the section without a vote.

MR. VAN WINKLE. Well, sir, in order to test the sense of the Convention and accomplish the gentleman's object, I will take the suggestion of the gentleman from Hancock and move a reconsideration of the vote by which the election was fixed for the 4th Thursday of May.

MR. HERVEY. I desire to know whether the time now fixed is the 4th of July?

MR. VAN WINKLE. No, not the election; the time for the terms to commence. The time of holding the session of the legislature is in January.

MR. HERVEY. Then, sir, I desire to make a motion to change the time of election.

MR. VAN WINKLE. I was going to move a reconsideration to give the opportunity. I would simply add that if the members deem it worth considering now, that the time for the meeting of the legislature having been changed to a date so much later, this would give an opportunity to fix a later day in the fall, when probably gentlemen generally would be as much disengaged as on this day in the spring—say about the time it is usual to hold the presidential election.

I will, therefore, move a reconsideration of the vote by which the Convention refused to strike out the 4th Thursday of May.

MR. STUART of Doddridge. It seems to me the gentleman voted against the 4th Thursday of May, and has no right to move a reconsideration under the rules.

MR. VAN WINKLE. Did I? Then perhaps some other gentleman would do it. I wished only to test the sense of the Convention, whether they were willing to consider the question of altering the day. If not, it will be disposed of at once.

MR. HARRISON. I have a right, I believe, to move a reconsideration. I voted for the 4th Thursday of May. I move to reconsider that vote.

MR. STUART of Doddridge. There will have to be another consideration if this time is changed, for you have fixed it that the office commences on the 4th of July.

SEVERAL MEMBERS. Certainly, we will have to change that.

MR. STUART of Doddridge. Well, sir, that will lead to the necessity of another reconsideration and discussion on both these points.

MR. VAN WINKLE. That is an important change. It is worth the discussion.

The question was taken on the motion to reconsider, and it was lost.

MR. LAMB. I would move, then, Mr. President, to adopt the balance of this section.

MR. BROWN of Preston. I do not remember, sir, whether the last clause of the section was acted upon or not. I presume it was, however. It strikes me that if an additional section proposed to this report by the gentleman from Ohio shall be adopted, that that latter clause is entirely unnecessary.

The provision to which I allude is the provision (the substitute) that the legislature will provide by law, subject to the provisions of the Constitution, for filling vacancies for the unexpired terms. It seems to me we are perhaps going to cover the same ground exactly by two provisions, one or the other of which will be entirely unnecessary.

MR. LAMB. I would suggest to the gentleman from Preston that many cases of this kind may arise. This proposition has not been acted on. Should this be adopted as well as the concluding clause of the section, the whole matter will go to the Committee on Revision who if they find double provisions covering one thing will of course leave one of them out. We may as well act upon it as it stands at present.

THE PRESIDENT. The gentleman made no motion?

MR. BROWN of Preston. No, sir; merely an explanation.

The question was put on the adoption of the second section and the section was adopted.

The Secretary reported the third section:

"3. For the election of senators, the State shall be divided into nine senatorial districts, as nearly equal as possible in white population; each district to choose two senators. Every such district shall be compact, formed of contiguous territory and be bounded by county lines. After each census hereafter taken by authority of the United States, the legislature shall alter the senatorial districts, so far as may be necessary to make them conformable to the foregoing provisions."

The third section was adopted, and the Secretary reported the fourth as follows:

"4. Until the senatorial districts shall be differently arranged after the next census taken by authority of the United States, the counties of Hancock, Brooke and Ohio shall constitute the first senatorial district; Marshall, Wetzel and Marion the second; Monongalia, Preston and Taylor the third; Pleasants, Tyler, Ritchie, Doddridge and Harrison the fourth; Wood, Jackson, Wirt,

Roane, Calhoun and Gilmer the fifth; Barbour, Tucker, Lewis, Braxton, Upshur and Randolph the sixth; Mason, Putnam, Kanawha, Clay and Nicholas the seventh; Cabell, Wayne, Boone, Logan, Wyoming, Mercer and McDowell the eighth; and Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe the ninth."

MR. LAMB. Mr. President, I have already said sufficient, I presume, in reference to this apportionment. I need not repeat the explanation I gave in regard to it. I can only assure the Convention, and you, Mr. President, it is the very nearest we could come to making an apportionment precisely according to population; the very best shaped districts we could get, having that object in view. If we have not made it all that might be desired, it certainly has not been for want of trial, for there has been a vast deal of figuring spent on this subject, I can assure you. The matter has been tested in almost every shape. Every county in the State has been put in every position in which it could be in the attempt to improve it; and I do not think it is possible to come to a more just and equitable apportionment than that which is here presented.

MR. BROWN of Kanawha. Mr. President, I wish to move an amendment to that section. I wish to move as an amendment the double district, as it is termed, in the minority report, beginning with the counties of "Hancock", etc. I do not propose to enter at large on the discussion of this subject, as it has been to some extent the subject of discussion already, in connection with the question of the composition of the house of delegates.

The following is the portion of the minority report which I offer as a substitute for the section reported by the committee:

"1. The counties of Hancock, Brooke and Ohio shall constitute one district.

2. The counties of Wayne, Cabell, Logan, Boone, Wyoming, Raleigh and McDowell shall constitute another district.

3. The counties of Monongalia, Preston, Taylor and Tucker shall constitute another district.

4. The counties of Mason, Putnam, Kanawha and Fayette shall constitute another district.

5. The counties of Marion, Marshall, Wetzel and Tyler shall constitute another district.

6. The counties of Jackson, Wood, Pleasants, Wirt, Calhoun and Roane shall constitute another district.

7. The counties of Harrison, Barbour, Doddridge and Ritchie shall constitute another district.

8. The counties of Greenbrier, Monroe, Mercer, Nicholas and Clay shall constitute another district.

9. The counties of Lewis, Upshur, Randolph, Pocahontas, Webster, Braxton and Gilmer shall constitute another district.

And if the following counties become a part of this State, then—

10. The counties of Pendleton, Hardy, Hampshire and Morgan shall constitute another district.

11. The counties of Berkeley, Frederick and Jefferson shall constitute another district.

Two senators to be elected by the voters in each district."

Substitute that first double-district, as it is called, in the tabular form, the first part of the minority report, in lieu of the provision in the committee report. I desire to call attention to the fact that while there is a greater inequality between several of the districts than in the committee's report, I think it does attain another end of equalizing the representation of political weight in the two ends of the State, which the committee's report does not do. And as the gentleman from Ohio did me the honor to express his gratification that I had become a convert to the fact that the committee's report had attained very nearly the equalizing in numbers, the principle that is laid down as a fundamental principle, that is not the ground of my complaint of that report. A perfect equality, I know, is impossible as long as you have counties of different sizes and different populations. The objection I urge to it is that the inequalities added together in the one end and of diminution of excess in the other, enlarge that excess. Now, where the errors compensate each other, I have no serious objections. In the minority report, I endeavored, and I think to a very great extent, did remedy this. The question then is, whether the fact that two districts adjacent and in the same section have a considerable difference between them yet as between the two sections of the State on the equilibrium, is better kept up I think. There is another idea I have endeavored in the report that I think is more effectually guarded than in the majority report and that is this: That while the equality of population and territory is one object, the geographical features of the territory, the components in forming the districts, whether they are united and such as shall increase the business relations of the people of each district and their

peculiar and local institutions, are looked to in the form of those districts; and I think these ideas are better developed in this substitute than in the committee report, and therefore, I shall prefer it.

MR. LAMB. I merely wish to say in regard to the inequalities in this report that if you take all of them together—if you take the largest districts and compare them with the smallest—the difference is 6200, which amounts to less than one-fifth of a district. The largest district is the sixth, which is in the middle territory, and the next largest is the fourth, which is also in the middle territory; so that this small difference would not have been an exceeding hardship even if it had all been thrown on the southern end of the territory. It would have hardly amounted to one-fifth of a district. But it is by no means thrown there.

MR. BROWN of Kanawha. I will say to the gentleman if he will throw that difference between the three principal districts and three lower districts on my end of the State, I will go for the report.

MR. LAMB. It cannot be done without making new counties.

MR. BROWN of Kanawha. It can be done. There is no difficulty about that. If I understand, adding together the three upper districts and the three lower districts—the middle ones are of course common—add in this way, the difference is some six or seven thousand.

MR. VAN WINKLE. Cannot possibly be more than 2500.

MR. SINSEL. We have just passed a section providing that these districts are to be of contiguous counties and compact. Now if you look at Monongalia and Taylor, they just touch in this way—corner on the same tree. (Holding two copies of report corner-wise together.) They have a population of twenty thousand and upwards while others have but thirteen thousand. We have senatorial districts of single counties.

MR. VAN WINKLE. Does the gentleman from Kanawha propose to connect his single districts or his double districts?

MR. BROWN of Kanawha. No, sir; the double ones.

MR. POMEROY. I do not know whether we could get at it, but I really think we ought to postpone this section with a view of reconsidering the other section. A large majority I think are in

favor of single districts. I know that I am; and I am only carrying out the wish of my constituents to have single instead of double senatorial districts. I think that vote was taken without us having time to consider, and I really thought the large majority of the Convention was in favor of single senatorial districts if they could be so arranged. And I thought the gentleman from Kanawha had a report—whether it was the proper apportionment or not I cannot say; but I really feel aggrieved at the idea of double districts.

MR. STUART of Doddridge. I never was more gratified in my life, going along without any discussion on this section, and I was going to compliment my friend for having waived his objection to it; but now to come in at this hour, without even making a motion to reconsider—it seems to me he wants to tangle us up again. Why, sir, just look how smoothly we passed along! I understand there is no motion to reconsider that vote at present. I only want to say that the double district as reported here by the committee, that every member of this Convention can go out and work at it a week or month, and it is not possible to make anything like a report that will come nearer equalizing districts than this. I have worked at it for weeks and could not change it; and I say if there is a gentleman here, who will change it and make it more equal, he will do more than I can do. Before you attempt to move an amendment of this thing, try your hand on it and see whether you can do it. Do not get us torn up here without knowing whether you can propose something better.

MR. VAN WINKLE. That is it.

MR. LAMB. I suppose the Convention will be somewhat astonished to hear me announce that I am in favor of single districts too. The gentleman from Doddridge will bear me witness I was so from the start; but I ciphered at the matter until I got tired of it and I found it was impossible to arrange single districts with anything like equality and justice and I abandoned that. The proposition of the gentleman from Kanawha for single districts is a very fair sample of the result which you can figure out with the best ingenuity you can exert in regard to the matter. I doubt very much whether if you adopt the single-district system you can improve much on the proposition of the gentleman from Kanawha. For the counties are so situated and the amount of population lies in such direction that it is impossible to secure anything like a proper equality of representation by a single-district system. I

tried it to my heart's content. If the gentleman wants to try it, why—

MR. BROWN of Kanawha. As the gentleman suggests, I had formed a report for a single-district system and a substitute for the majority report, so the Convention might determine whether they would have a single or double district. The Convention having determined that it shall be double, therefore I presented the double district substitute. I confess I was in favor of a single district if I could get one. I undertook it and the report I submitted was the best I could do. It is not what I wanted I will admit very candidly; but I do not believe any gentleman can sit down and get it just as he wants; and the question is how near he can get to it. As that has been laid on the shelf; I only look to the second which contains the districts with a ratio of 33,824. I have the first district the same as taken in the majority report, 32,063. I have then endeavored to equalize the sections as far as possible between the two ends of the State. I endeavored to form a district at the south end as near as possible to that at the north end, arriving at 31,382, a little small. The next, therefore will find this compensated, as it is a little too large. Beginning thus at the other end of the State you have 34,786. The next formed at the other end is a little too large. I found it utterly impossible to district the State to keep up the idea of what I conceived to be equality between the sections of the State and at the same time equality in the districts. To attain the one it is absolutely necessary, unless you split a county in two, to go from one end to the other, alternate, and where there is a deficiency to compensate in the next district formed, which will be that joining to it. How far that has been accomplished it is for the house to judge. I have done the best I could. I think this report comes nearer to it in the meaning of carrying along the two features than the majority report. But while up, the gentleman from Wood thought there was only a few hundred difference in these sections. Some gentleman has done me the kindness to make a calculation. At the north end of the State the first, second and third districts amount to 97,736, and three districts at the other end of the State amount to 104,273.

MR. LAMB. There is a mistake in the addition of a thousand.

MR. VAN WINKLE. I referred to the smallest and the ratio. I did not refer to the aggregate.

MR. BROWN of Kanawha. It is ninety-seven against one hundred and three. That makes a difference of six thousand and

upwards thrown on one end of the State, which I propose to take and throw on the other end.

MR. VAN WINKLE. Mr. President, I have something more to say on this question in view of what I said to-day; but as the subject has been pretty well ventilated I apprehend that every member understands the whole aspect of it in every possible bearing almost. I am content to waive any further remarks if that is done by others. I would simply say in answer to the gentleman from Kanawha that arranging these districts so as to balance north and south is not all that is required. We may very soon have a question between east and west. We do not know. So that it ought to be balanced that way whether it is or not. But I am willing the vote should be taken, and as it is near our hour of adjournment, take the vote and go home. If, however, debate is to be reopened, I want to have a chance at it.

MR. CALDWELL. Before a vote is taken I would like to call attention of the members of the district of which my county of Marshall forms a part. This minority report makes the fifth district embrace over 7,000 more than some other districts—the second district, and 6,000 more than the first district, and, sir, some 8,000 more than the 10th district. I protest, sir, as representing part of Marshall county against the injustice of this arrangement of the senatorial districts so far as Marshall is concerned. I cannot but think there is marked injustice in it. I much prefer the report of the committee. The equalizations there, according to my view of the matter are much nearer at least to a fair apportionment than in the report of the minority. I merely rose to call the attention of the members.

Mr. Ruffner occupied the chair.

MR. BROWN of Kanawha. I desire to call attention of the members to the fact that while it is true these districts have large excess fractions, the counties are very compact, all join each other and all except Marion are river counties. They are homogeneous. While Kanawha county, which is its offset has 37,911. There is only about a thousand difference, and we cannot get a county less than that.

MR. STUART of Doddridge. To reconcile the gentleman from Kanawha, there are three classes—lower, upper and middle. If you look at the middle class, of which my county is one, my district

is 34,976; and I make no complaint because it is as near the principle as we can possibly come. We cannot make any classification anything like it, and I think we are willing to submit to this report. The gentleman complains because there are a few thousand surplus in the lower end, when we have as many in the middle as he has, and a little more, he ought to be satisfied.

The question was taken on Mr. Brown's substitute, and it was rejected.

The question recurring on the fourth section of the majority report, it was adopted.

MR. STEVENSON of Wood. I move we adjourn, Mr. President.

The motion was agreed to and the Convention adjourned.

* * * * *

XXVI. SATURDAY, JANUARY 11, 1862.

Convention met at the appointed hour, President in the chair.

Prayer by Rev. Gideon Martin, of the M. E. Church, Wheeling.

Journal read and approved.

THE PRESIDENT. The Convention when it adjourned had under consideration the 5th section of the report of the Committee on the Legislative Department.

MR. HERVEY. Mr. President, before proceeding with the regular business, I want to submit a paper to come up on the final passage of this report, to amend the first part of the 3rd section of the report of the Committee on the Legislative Department, and ask that this paper be printed.

There being no objection the paper was received and order made that it be printed. The paper is as follows:

Until the senatorial districts shall be differently arranged, after the next census, taken by authority of the United States, the counties of

1.	Pendleton	5,873	
	Randolph	4,793	
	Pocahontas	3,687	14,352

Shall constitute the 1st district.

2.	Preston	13,183	
	Tucker	1,396	14,579
	Shall constitute the 2nd district.		
3.	Harrison	13,185	13,185
	Shall constitute the 3rd district.		
4.	Ritchie	6,809	
	Gilmer	3,685	
	Doddridge	5,168	15,661
	Shall constitute the 4th district.		
5.	Monongalia	12,907	12,907
	Shall constitute the 5th district.		
6.	Marshall	12,936	12,936
	Shall constitute the 6th district.		
7.	Marion	12,656	12,656
	Shall constitute the 7th district.		
8.	Taylor	7,300	
	Barbour	8,729	16,029
	Shall constitute the 8th district.		
9.	Mason	8,752	
	Putnam	5,708	14,460
	Shall constitute the 9th district.		
10.	Jackson	8,240	
	Wirt	3,728	
	Calhoun	2,492	14,460
	Shall constitute the 10th district.		
11.	Wood	10,791	
	Pleasants	2,926	13,717
	Shall constitute the 11th district.		
12.	Wetzel	6,691	
	Tyler	6,488	13,179
	Shall constitute the 12th district.		
13.	Lewis	7,736	
	Braxton	4,885	12,681
	Shall constitute the 13th district.		
14.	Upshur	7,064	
	Webster	1,552	
	Nicholas	4,470	13,086
	Shall constitute the 14th district.		
15.	Roane	5,309	
	Clay	1,761	
	Fayette	5,716	12,786
	Shall constitute the 15th district.		

16.	Greenbrier	10,499	
	Raleigh	3,291	13,790
	Shall constitute the 16th district.		
17.	Kanawha	13,787	13,787
	Shall constitute the 17th district.		
18.	Cabell	7,691	
	Wayne	6,604	14,295
	Shall constitute the 18th district.		
19.	Boone	4,681	
	Logan	4,789	
	Wyoming	2,797	
	McDowell	1,535	14,802
	Shall constitute the 19th district.		
20.	Mercer	6,428	
	Monroe	9,526	15,954
	Shall constitute the 20th district.		
21.	Brooke	5,425	
	Hancock	4,442	
	Ohio County	4,210	14,067
	Shall constitute the 21st district.		
22.	City of Wheeling	18,000	18,000
	Shall constitute the 22nd district.		

At the first election held under this Constitution the city of Wheeling shall elect one senator, and the counties of Brooke, Hancock and Ohio County, one senator, and in this manner for the next three succeeding terms. For the fifth term the city of Wheeling shall elect two senators; and the counties of Brooke, Hancock, Ohio County and the city of Wheeling, shall elect in the above manner until a reapportionment of this State.

MR. VAN WINKLE. I will offer this amendment that I indicated yesterday. I think it ought to come in between the 4th and 5th sections. It relates partly to senators and partly to delegates and if adopted should be an additional section.

"Of the senators first elected, one from each senatorial district, to be determined by lot, in the presence of the senate, shall serve until the fourth day of July, 1863, and the other until the same day of the year 1864; and delegates as elected shall serve until the same day of the year 1863."

MR. VAN WINKLE. I tried yesterday when offering the amendment which was adopted to explain to the Convention the uncertainty as to what time the Constitution would go into operation. The object of the amendment was to make the term begin

twenty days after the election. Now if that twenty days should expire after the 4th of July as the matter stands we have fixed it so that they hold for two years. This is intended to make it that the first class of senators hold until two years has expired after the 4th of July next. So far as this feature of the amendment is concerned, it is only to make that certain so there shall be no difficulty in determining when the terms of these senators will end. It also contains another feature which I have contemplated in connection with these double districts and which I think will tend to reconcile many to them. As I said yesterday, it is impossible to make single senatorial districts without diminishing the members too much. You ought to have sufficient numbers to do the business, to divide into the proper committees, and on the other hand we have to avoid making the senate too large. There ought to be a certain ratio between that and the house of delegates. Of the senators first elected, one from each senatorial district, to be determined by lot in the presence of the senate, shall serve to the 4th of July, 1863, the other to the same day, 1864. The effect of that in connection with the clause passed under the report of the Committee on Fundamental and General Provisions, would establish the rule and the principle and the operation of one-half the senate being elected every year, one half going out each year. The advantage of that is very apparent, you retain one-half the senate in office. They are familiar with the mode of business, and—what is perhaps more important—they are practically acquainted with what you may call the state of the business. They know the reasons and position of the legislation of the previous session, and they, as it were, transmit it to the next house. It will give steadiness to our legislation, and will give us a dignity, which if the senate were nothing but a house of delegates with smaller numbers they would not attain. The Senate of the United States, as everybody is aware changes one-third of its members every year, they being elected for six years; and it is to realize the same advantages that we propose this amendment. Everything of human institution, or which humans have the management of is apt to be defective in some points; and while there can be no doubt that the people are always safest under a popular government when they have the management of their own affairs, in their own hands, they are always safest because their interests dictate to them what is the safest course to pursue. But it has been found that mere popular assemblies are very apt to decide hastily or without due consideration, and the second house is in all our states and in the national government

interposed as a sort of balance-wheel—something to keep the motion steady, to prevent the evils which are inherent in popular legislation; for our form of government, while the best yet devised, has, of course, some infirmities connected with it, or else it would belong to the other world, not to this. The senate is introduced in order to keep the course of legislation more steady and maintain a consistent policy in the State; and while the senators are sufficiently acted on by the popular will, so that it is not to be supposed they will long persist in opposition to that will, yet at the same time, knowing better the whole ground from their previous experience they will act as a check on any hasty or inconsiderate legislation from the other house—not to say by any means that all the legislation of the lower house is to be hasty; but from the very mode of its councils it is to be expected there will occasionally be something of the kind. It is to me something creditable to the State of Virginia that her policy—without saying whether that policy has been a very good one, or a bad one, or an indifferent one—that her policy has generally been consistent with itself. Whatever the leading policy of the state has been, it has been very consistently pursued. And I think notwithstanding the many things of which we complain in the administration of our state government, yet that one thing has atoned for a great deal of evil.

I have more than once expressed my great desire that such a constitution should be given to the senate as to make a house to which the best men of the State would be willing to go if called on to do so; men of experience, men of information as to public matters, men of mature ripe judgment. If you get the upper house composed altogether of such men, you would give consistency, and I must add a beneficent tendency to your legislation which it can hardly otherwise attain. I have expressed my opinion, sir, and I think it must be the opinion of a majority of this Convention that from the diverse aggregates of population in the several counties, ranging from fifteen hundred to over thirteen thousand, and almost at every point between it, from the peculiar location of many counties—as, for instance, this Panhandle—the counties we are perhaps to admit from the Valley, the counties lying in the northeastern section, they being generally large counties—it is impossible to make a senate of single districts that shall bear anything on its face like fairness. I have tried it in a variety of ways; tried it for single districts; tried it by making nearly all single and putting in a double one or two, but I have found that would be awkward, at any rate, and did not answer the purpose.

But I want to suggest to gentlemen that what I now propose of an alternation of the senators will perhaps tend to cure the evil in a great measure. After the consideration I have given the subject of these double districts with this provision, I should favor the double districts because I think they will tend, occupying so much larger territory, embracing, of course, so many more interests, that that alone would be one of the things that would tend to give steadiness and consistency to the legislation of the State and respectability to the body.

As for reducing the number, sir, that is, of course I mean not more than one or two if that should be convenient. You will see the evil now exhibited in the existing senate. They have but eight or nine members, and they ought in ordinary legislation to have nearly double that number to properly constitute standing committees. They have as many standing committees as they have members. Well, it is utterly impossible that business can progress when there is nobody to do it; and I am afraid unless these Valley counties come in we will find the same difficulty in the house of delegates, because you will not have members enough to distribute among your committees to give the committees that ability to act which numbers will give them. Every member is aware that the great labor is in the committees; and in those of which I have been chairman no report that I have made has been without at least one suggestion from every member of the committee. They have all aided. Well, again, committees will arise in course of legislation, such as we have here, where information is to be collected and collated and examined, and it may be very laborious. I merely throw out these suggestions to show that we cannot well have a smaller number of senators than we have already fixed and cannot have single districts for that number.

I therefore, sir, offer the amendment that I have indicated. In the absence of the Clerk, I will read it again:

"Of the senators first elected, one from each senatorial district to be determined by lot, in the presence of the senate, shall serve until the fourth day of July, 1863, and the other until the same day of the year 1864; and delegates as elected shall serve until the same day of the year 1863."

If the feature of alternate elections is objected to, it had better be stricken out, because I think that is a matter of course.

MR. SOPER. I submitted before the hour of recess a proposition to this effect. I approve of all the remarks the gentleman has

made; but I would suggest to him the propriety of leaving out the dates in the amendment.

MR. VAN WINKLE. I had them in blank until the Convention passed on the subject last evening.

MR. SOPER. I had prepared a substitute intended for the second section:

"And after the first election, the senators of each district shall be divided into two classes. The first class shall hold office for one year, the second for two years; so that one-half thereof shall be chosen annually thereafter."

MR. VAN WINKLE. I should have been entirely contented with this. But mine goes a little further in fixing the end of the term. Now, we would disturb the present arrangement, if it is to be permanent, if they were not elected until, say, August. If they had to serve two years or three, I would terminate in August, not at the time fixed by the Convention. Of course, if the time is altered in the one case, it will be altered in all the others.

MR. SOPER. That is the objection I see to it, that is fixing the time. The time is to be a matter of uncertainty.

Mr. Lamb addressed the Chair.

THE PRESIDENT. The senator from Ohio. Does the senator from Tyler give way?

MR. VAN WINKLE. (Sotto voce) We have no senators here.

MR. LAMB. Two distinct objects are embodied in the resolution of the gentleman from Wood. So far as one of the provisions is concerned, something of the kind will be absolutely necessary in the Constitution or in the schedule. We fix the commencement on the 4th of July. We do not know at present at what time the election may take place, and it will be necessary to provide in some way or other for that contingency. The other provision is the one for a classified senate—the same in substance offered before the recess by the gentleman from Tyler and laid on the table to be printed on his motion. Now, I would be disposed to acquiesce in this thing of classifying the senate if the gentleman would relieve me of one difficulty in regard to the matter, which was suggested in the Committee on the Legislative Department, of which we have yet heard no explanation. It is, how you carry on this classification when you come to reapportion—when you come to make a new apportionment

under a new census. The district would then have one senator entitled to hold his seat for one year and another entitled to hold for two years. In making this reapportionment under the new census with a view to classifying the population of the different districts, it may be necessary to change the whole of the districts. But to specify. In the apportionment adopted by the Convention, the counties of Marshall, Wetzel and Marion constitute a district. When you come to reapportion that district it will have one senator in office for one year and one for two years. Now in making a reapportionment suppose it should become necessary—which is not at all improbable—that you put Marion, Monongalia and Taylor in the district. Marshall and Wetzel go into a different district and Marion into a different district. When the term of the senator for one year elected by the district composed of Marshall, Wetzel and Marion expires, who is to elect his successor, the district on the one side, or the district on the other? I take it from what occurred in the Committee on the Legislative Department, that if they could have seen their way through this difficulty they would have adopted the scheme of classifying the senate. It was the only objection suggested to it; and I do not know how to get over it. If the gentleman can unravel the riddle, I presume the committee would acquiesce in the classification of the senate.

MR. SOPER. Mr. President, I suppose, sir, that whenever the election districts are altered, it puts an end to the office of each senator, and the legislature which makes the new apportionment will provide for it, for elections under the new arrangement of districts. I suppose that to be it. If there is any doubt about it, we can very easily add a clause here putting an end to the office of all the senators whenever a new apportionment shall be made. We can so provide for it in the Constitution that whenever it becomes necessary to make a new apportionment their offices shall cease and then the legislature will provide for the manner in which they shall deem best to have senators classified under the new apportionment.

MR. VAN WINKLE. My impression is different from that of the gentlemen who have spoken. It says "for the election of senators the State shall be divided, etc." After each census, the legislature shall alter the senatorial districts so far as may be necessary to make them conform, etc. That means nothing but to take one county and change them. The districts would remain substantially the same. If the districts were abolished, the senators would be

abolished. But I think in merely making alterations it would not have that effect. I think the difficulty would not arise, but it could be removed if it did. The gentleman from Tyler has suggested that already.

MR. BROWN of Kanawha. I do not think it is necessary or proper to have the senate abolished at every alteration. It seems to me we are fixing the Constitution so that when put in operation and the representatives of the people have assembled and constituted a legislature it should continue and that this provision which meets my approbation, very fully,—and I confess further avoids much objection that resulted from double districts — but I am sure that this completely carries it out, by putting one half the senate out every year, and that it shall be one for each district put out every year, so that in effect throughout the State there will be an election for a senator in each district every year at the same time the election for the house of delegates takes place. There will always be on hand one-half the senate who are old members with the experience of at least one year's service and the wisdom they may have gained in that time, as a standing and established body, a reserve against that characteristic which the house must always have of an entire renewal every year.

The difficulty suggested by the gentleman from Ohio, that it might be the district would be so altered, so arranged at least, that the senator might be representing another county than that which elected him. As to the first class of senators there seems to be no serious difficulty or objection in it, for the same number of senators, exactly, in the State would be representing the same entire people of the State. And if the old senators were to continue until the next election there would be no objection in the fact of their continuing, and all the benefits of their service would be derived in that case as in any other; perhaps more, because in the new order of things new men would come in and express whatever new ideas were derived by the change, and they would become indoctrinated with the business of their vocation by the time their co-senators whom they found in office went out, when a successor would come in precisely on an equality with this new senate. I think the feature is well to be preserved. I decidedly prefer it to having the terms of the whole senate expire at each apportionment. Now if there was to be a change in the number of senators there might be some objection to it; but inasmuch as the senate is to continue, I see none whatever. You fix the number of the senate

of the State, and you are preserving the one part of it in office for the interim of one year while the new apportionment is being applied and new senators elected. The reapportionment of the districts should not have the effect to bring the senate to a close.

MR. PAXTON. Mr. President, I should like to hear the amendment reported.

The Secretary read:

"Of the senators first elected, one from each senatorial district, to be determined by lot in the presence of the senate, shall serve until the fourth day of July, 1863, and the other until the same day of the year 1864; and delegates as elected shall serve until the same day of the year 1863."

MR. PAXTON. A difficulty is suggested by fixing any particular dates when the terms shall expire. We do not know that the terms will commence as soon as here contemplated. If we had any assurance that this movement would be recognized by Congress at this session; but it may not be recognized this session, or even the next. It might be deemed expedient to postpone the new State, and hence would be better for us not to provide that the terms should expire at a particular time. It appears to me the proposition of the gentleman from Tyler would meet the difficulty.

If it should happen that the present session of Congress should not act on this favorably, it will be necessary that the Convention should reassemble, for there are other things that perhaps will have to be changed in the same way. It was to avoid the necessity of that I made the suggestion.

MR. VAN WINKLE. I do not like to contemplate the possibility of not getting through this session. I think we will.

MR. BROWN of Kanawha. I am struck with the force of the remarks of the gentleman from Ohio, and I think we should put the Constitution beyond this contingency, and also avoid the reassembling of this Convention, for I presume when we adjourn, we will adjourn *sine die*; and it should be so expressed in all its language throughout that no action of the Convention will be necessary on it again, whether Congress should act at one session or another.

MR. PAXTON. I move to amend the amendment by adopting the language of the gentleman from Tyler. That will avoid the difficulty that has been suggested, and to my mind really is one.

The Secretary reported the motion:

To substitute for Mr. Van Winkle's proposed amendment the following to be a separate section between sections 4 and 5:

"The senators first elected shall be divided by lot into two classes; the first class shall hold office for one year, and the second class for two years, so that one-half thereof shall be chosen annually thereafter."

MR. STUART of Doddridge. I would like to make it that one out of each district shall go out of office.

MR. LAMB. That is expressly provided for here.

MR. VAN WINKLE. Well, sir, I will withdraw mine with a view to let the vote be taken on the proposition of the gentleman from Tyler.

MR. LAMB. I would ask whether the Convention have made up their mind how this is to operate in the case of reapportionment. I take it that if the amendment stands simply as proposed here its operation would be as suggested by the gentleman from Kanawha.

Mr. Paxton's motion was agreed to and the section adopted.

The Convention proceeded to considered Section 5.

MR. SOPER. I want to propose an amendment to this section, sir. After the word "than," in the 37th line, strike out the words "one-half the ratio of representation for the house of delegates" and substitute the words "four thousand," and after "apportionment" insert "after the next census." This is not intended to operate upon the present apportionment which we shall make. The amendment will apply to apportionments made after taking of future censuses. I do this, sir, with a view of amending the section following, the 6th, striking out nearly all of it and providing that one delegate will be given to every county and delegate district having a population of four thousand. If this succeeds, I shall propose an amendment to that effect to the next section.

Now, sir, I do not propose to go into the discussion of the necessity of this matter, because I suppose it was very ably looked into yesterday. I will state some facts based on some knowledge which I have had in the course of my life. I wish to make that applicable to the matter now before us. I must testify, sir, that if you base the representation in the house of delegates entirely upon the white population, in a short time your cities and prosperous parts of your State will increase nearly the whole representation

and the agricultural portions of your country will be finally left, a large number of them, without any delegates. Now, sir, I recollect, that the county where I resided in the State of New York, where gentlemen of the Convention will recollect a number of the delegates or members of the assembly are elected—that county, sir, small in territory, had one member of the assembly, and she now has seven; and it is because the city of Brooklyn has so rapidly increased in population that it has been the cause of her increase in representation in the house of assembly. I recollect another county, sir—a wealthy, flourishing agricultural county when I first became acquainted with it, which was represented by five members of the assembly; and now, at this time, it is represented by two. I remember other counties, sir, which had a representation of three members in the assembly and now have but one. And that not in proportion to the white population of the state but because it is an organized county. You will perceive, sir, that by the law of population, connected with trade and manufactures and commercial pursuits which are always to be found in the cities, the population is constantly increasing. We have here, sir, in this new State the city of Wheeling and the town of Parkersburg, so that the population of Ohio county and Wood county will necessarily increase much faster than in agricultural counties. And what will be the result? Why, sir, if you are to fix the representation in the house of delegates according to population, or according to the portion of it which is set forth in the report, the result of it will be, sir, that many of those counties which now have a delegate at the taking of the next census will be left without a delegate. It is with a view of securing to every county a delegate that I propose this amendment. And I have fixed the number four thousand not that I am particularly attached to that number—a less number would be satisfactory to me—but I have named the number 4000 because it has been set forth here I think in some of our reports in relation to the organization of new counties. If the amendment that I propose prevails, every county within this State at all times hereafter having a population of 4000 or more will have a delegate; and after giving to our county and every delegate district within the State having that amount of population a delegate, the additional delegates will be divided among the counties of the State according to their population. Wherever that goes most largely, there the number will be. Now, sir, I want gentlemen representing the country counties here to look at it; and I will lay this down as a fact: true, population in most of the

counties of this State will increase, but the time will come when our agricultural counties will be filled up and the surplus population among them must of necessity emigrate. Not so in relation to your cities. The larger increase, the great capital, the more extensively they are engaged in business, the greater their population. So that if gentlemen will just look at it they will see at once that unless there be some such guard as this the time will come when these large cities will by virtue of their population engross nearly all the representation of the State; and the time may come, sir, when the representation in the house of delegates shall come exclusively from the cities unless you go upon some principle of this kind. I mention to you that within a few years back where in a single county having a single representative in the house of assembly had seven. I could refer you to New York City; when I first knew that city the amount of its representation in the house assembly was ten; now it is between twenty and thirty. While we are preparing a Constitution which is to last for all time, it is our duty to protect our agricultural counties if we wish them to have future legislation in the legislature; but you can only do it by saying that every county in your State shall have a delegate, or that every county with a small population shall have one. Now, sir, I have fixed the number 4000, and I hope at least when the next census is taken every county in the State will have that much. If it has, why then it will always be represented in the house of delegates. It is with that view that I have hastily set down here this morning to prepare an amendment to meet the object which I have thus briefly explained.

MR. LAMB. Mr. President, in order to understand fully the bearing of this amendment it may be necessary to state briefly what is the plan proposed in the report of the Committee on the Legislative Department, in order that we may see where the two propositions differ. The report of the Committee on the Legislative Department does provide that wherever a county has a white population equal to one half the ratio of representation it shall have a delegate by itself. Instead of adopting a fixed number of 4000 inhabitants, the plan here reported provides that if the population amounts to one-half the ratio of representation the county shall have a separate delegate. The difference between us is then here. The gentleman adopts a fixed amount to answer for all time to come without any reference whatever to the aggregate population of the State. We adopt a plan which will give a small county having one-

half the population which would strictly entitle her to a delegate its proper separate representation. Is not this liberal enough? Is it not fair enough? So far as we do depart from the strict principle of apportionment of representation according to population; so far as we do depart from that in reference to this question it is to favor the small counties. Kanawha county and Ohio get a representative only for 6618 white inhabitants. One of these small counties gets one for 3309. Then the plan reported by the Committee is that if a county has not one-half the ratio of representation it shall be attached to a contiguous county to form a delegate district. The gentleman has referred here on several occasions to the State of New York. He has cited other constitutions, I imagine from memory; but I would prefer that the Constitution of New York should speak for itself. The 5th section of the third article of that constitution, provides, as was read by the gentleman from Wood yesterday:

"The members of the assembly shall be apportioned among the several counties of the state by the legislature as nearly as may be according to the numbers of their respective inhabitants, excluding aliens and persons of color not taxed, and shall be chosen by single districts."

We then here stand on the same footing except in one respect as the constitution of the gentleman's own state places the counties of that state upon, and that is simply here: When a county in New York becomes entitled to two or more representatives in the lower house, that county is to be divided by the supervisors into separate districts, each one of which elects a single delegate. Whether we shall adopt that plan here or not is a question that has not been raised before us. It is attended with some difficulties and it would be attended with other great disadvantages. What do they do with small counties? Gentlemen, when this constitution was adopted there was one small county in the State of New York, Hamilton. The counties of New York are large; many of them have a large population. The number of the lower house in the State of New York is 128. I do not recollect the number of counties, but I do not think it exceeds 40.

MR. SOPER. Between 50 and 60.

MR. LAMB. Comparing the number of the house of representatives with the number of counties, you have an abundant representation for the purpose of apportioning representation according to population. But there was, it seems, one small county there. How

have they disposed of it? This same section, after providing that the supervisors in case a county is entitled to more than one member shall divide the county into single districts, contains this provision:

"Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of the assembly; and no new county shall be hereafter erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton until the population of the county of Hamilton shall, according to the ratio, be entitled to a member."

Now, sir, we are much more liberal here with the small counties. We say that the county of Clay shall elect with the county of Braxton until the population of Clay will entitle it to have a member; and it will be so entitled when it has half the ratio. We are twice as liberal as the gentleman's own state with these small counties.

There is one part of the gentleman's proposition—the application which the gentleman distinctly pointed out—in relation to which I must confess I do not see that it has any bearing, unless it is to raise again distinctly before this Convention the question which was adopted and decided upon yesterday. He proposes in this amendment that this 4000 ratio shall at each apportionment after the next census—"*after the next census,*" not under the *present census*—for the election of delegates from counties "containing a white population of less than 4000 shall at each apportionment after the next census be attached to some contiguous county to form a delegate district." The present section applies to the present apportionment and has governed the present apportionment. But this is only to apply after the next census; and for the present apportionment, I presume if this be adopted, the measure is to be followed up by our acting again on the proposition which we thought had been settled yesterday; that these delegate districts are to be abolished entirely until the next census and each county is to have its separate representative. That question has been sufficiently discussed, if the gentleman contemplates by his motion to raise it here again. The motion, I take it, Mr. President, is out of order; for it can only be raised before this Convention upon a direct motion to reconsider the decision of yesterday. The proposition—the argument rather than the proposition—of the gentleman is a singular mode, it strikes me, of carrying out the principle which this Convention has established, whether it

intends to act upon it or not—which this Convention has unanimously recognized, whether it is to govern their action or not—that so far as possible we will base representation in the legislature upon the white population. According to the argument of the gentleman, what it is necessary for us to be particularly careful to guard against is an increase of population. Those cities—for I take it the reference here in western Virginia to large cities such as Brooklyn and New York is mere delusion—but the gentleman's principle seems to be that those districts where the most rapid increase of population is to be expected are those that we are to particularly guard against; that some check is to be put on this rapid increase in population. Why, gentlemen, we have been told here, and it is what we all expect, that these same small counties, these same sparsely settled districts of country, will be the regions of the State, so far as western Virginia is concerned, whatever may be the case in New York, where the population of an empire is founded in the limits of the state—but here the increase of the population is to be expected in these same sparsely settled districts —the comparative increase, at least. We have been told here it was our duty to hold out all the encouragement we could to an increase of population yet we are to be urged, when we come to apportioning representation to be particularly careful to guard against the increase of population giving its corresponding increase in future apportionments of representation. Is this carrying out your principle? Is this republicanism? Are the dangers which do exist in New York to be apprehended in western Virginia? Are we going to have a city like New York City, or even like Brooklyn, here on the borders of the Ohio. I hope, gentlemen, it may be so; I should be rejoiced if it were so; but to calculate on anything of the kind or to tell this Convention that anything of the kind is to be so much apprehended that you must adopt constitutional provisions to prevent its effect, is mere delusion. Anyhow, gentlemen, if it were so, I would go for the principle that we have adopted; I would go for the fair application of that principle in the language of our fundamental provisions, "as far as possible," admitting that it cannot be carried out with precise equality in all cases. Above all things, I do not think it is necessary for this Convention to add provisions in their Constitution to provide against the danger of the increase of population in any section of the country!

MR. SOPER. Will the gentleman hand me that Constitution?

MR. LAMB (Mr. Lamb handing it to Mr. Soper). It is on the left-hand page.

MR. SOPER. Yes, sir. Now, if the gentleman is so conversant with the State of New York, he would know that the county of Hamilton had an existence without a separate organization for a great number of years; and it embraces a very large tract of country; which tract in Hamilton County and in the interior of Herkimer County is so barren, so poor, that there is scarcely anything growing upon it and it is covered with rocks and crags and rivers, and is the resort of people from the sea-board towns and counties during the appropriate season of the year to go there to fish, and in the pursuit of game to be found there. During the greater portion of the year very few people will undertake to live there—I mean during the winter season. And for some purpose which was deemed necessary in order to keep peace among those people, who were trappers in that region of country, it was deemed wisest by the legislature to organize the county of Hamilton at a time when there were not 500 inhabitants in it. And this I think is over thirty years ago. And I don't believe now that there are two thousand inhabitants in the whole county. Therefore it never had a full separate organization and was always connected with the county of Fulton for its police purposes. If the gentleman is conversant about the State of New York, he will, if he knows anything about the sale of lands there for taxes at times, find that this tract has been known for a great number of years by, at this time a very distinct name. It is called "John Brown's tract." This is the name it is known by, and has been for the last thirty years. Now, sir, I assert it as a fact that there is nothing in this Constitution to deny it, that at the time this Constitution was amended—it was formed in 1821—every county that then had an organization, with the exception of this little county had a representative in the house of assembly. And it is only those counties which are entitled to more than one member that the counties and cities have divided off into districts. If any argument is to be drawn from that fact it is in behalf of what we contended for here yesterday, that in the lower house the delegates ought to come directly from the locality they are intended to represent. So much did the State of New York see the necessity of it that where a county was entitled to more than one representative in the assembly they passed a constitutional provision compelling the supervisors of that county to take and lay off the county into districts so that the people in the

particular portion of the county should be represented in the house of assembly.

Well, now, sir, when I was up before I said here that the city of New York had between twenty and thirty representatives in the house of assembly; that the county of Kings had seven; and if you will look at the county of Erie, in which Buffalo is, Monroe, in which is Rochester, Oneida, in which is Utica, and Onondaga in which Syracuse is, and the county of Albany, in which Albany is, or Rensselaer, in which Troy is—and you take, sir, the members of assembly from those cities and add them together and you will find that they have more than one-half the lower house. It is, sir, because, the truth is, as I have before stated, that while your cities are constantly increasing in population, your agricultural districts are not. It is true, sir, that we expect that for many years here our counties will increase rapidly in population. They will of necessity do so; but the time will come when that will cease; the time will come when every farming tract of land over 40 acres, if you please, in your counties on which a man can live will be occupied, and his children as they grow up, must of necessity emigrate. Not so in your city. It will extend up and down your river and back through your hills after a while. Why, we cannot begin to calculate, we cannot set limits to, the increase of population of these cities; but you can to your agricultural districts.

Well, then, the question comes back, whether or not the principle adopted in the State of New York is not sound here, that every county organized in the State ought to have a delegate. I contended for the principle yesterday, sir; for I care so much about it as to the counties now organized, and looking to the future. We are here in our infancy; we are not in existence, but when we come into existence as a State, we will be in our infancy. I shall never live to see this state of things. There may be gentlemen here who will be here when your cities will increase their representation in your house of delegates till they will have control; and as a necessary consequence, sir, the smaller counties will decrease and lose. It is to guard against that that I am now insisting on the amendment that I am offering here to name 4000. It is said we have got some eight (or five) counties that have a less population than this. I suppose there are ten of them. Showing that the counties in a large portion of western Virginia contain but a small portion of the people. But another fact we ought not to lose sight of is this; that the whole territory of this portion of the State is now cut up into small counties, there may be but very little

room for the accumulation of counties hereafter; so that there is nothing to be feared from this increase of counties to operate with this principle.

I do not believe, sir—I hope—before we rise here we will not increase this number 46, for some reasons. I am not going to touch upon it now, but I hope gentlemen will see instead of reconsidering it the expediency of letting it stand, and, at all events of making the house at least two-thirds larger than the senate. But even if it is done, sir, or is not done, there is no necessity, no fear of the counties in this State increasing so fast that if we fix the ratio at 4000 that there will not be members of the house of delegates enough under the Constitution to represent the counties.

It has been remarked that I probably spoke from recollection, in reference to certain statements made by me yesterday in relation to the Constitution that has been referred to. I think I can remember matters, and I now turn to read it. "Every county heretofore organized"—mark the words—"Every county heretofore organized shall have a member of assembly except the county of Hamilton," which is of the description I have named. "Every county heretofore organized shall have a member of the assembly, and such counties as are entitled to more than one member shall be districted." Now, there are counties in the State of New York, sir, composed of four townships, with a population not exceeding probably ten or twelve thousand; and the ratio of representation according to the last apportionment, if my recollection serves me, is between twenty-five and thirty thousand. I merely refer to what I had known to be the effect of this increase of population and where I had become satisfied of the necessity of having some limit here as to the ratio of representation for the protection of the agricultural counties. I have the honor to represent Tyler. That county is an old county; has been in existence some thirty years; and although some portions of Doddridge and Pleasants have been taken from her, she is left with a population of but little over six thousand; and if you do not adopt the principle I am now contending for, sir, the time will come when she may be without a delegate.

MR. HALL of Marion. It does occur to me that we have enough to do without borrowing trouble, and that while we are making a Constitution that is to last more than a day we are not making it like the laws of the Medes and Persians, that it never can be altered if the necessity shall arise. I am not alarmed with the danger

of being eaten up by the great and growing cities. I say let them come and eat us! It is the very trouble that I would seek. I protest against legislating here with reference to the precedent set by the State of New York. We are not situated as New York has been. We have no facility, there is no possibility, of growing or building up such great commercial cities as exists there. We are not to be taken by that enemy in a very few years. I am not alarmed by any such things. I am willing to look to the experience of other states. I am as willing to look to that of New York as of any other; but I am unwilling if other states have erred that we should repeat their errors here; and whenever we are asked to depart from a proper principle to regulate our action, I do not care if every state in this Union has done it, I would not follow their example. A single county was the exception there that had not a delegate, according to the statement of the gentleman from Tyler; and now where are the figures? Why, sir, if there was but a single county in the proposed State of West Virginia that had not the amount we required a county shall have to be entitled to a representative the very same case would exist in our Constitution as existed there, and the very same clause would be incorporated in the Constitution. What was the population of the various counties there except the one? So there is no argument in that at all.

It is admitted, I believe, by the gentleman from Tyler that before we are to be swallowed up by these great cities in this country, we are going to have an increase of population in these counties in the rural districts. Well, then, we will have more power to strangle these giants than now. Let us consider the work of today, and when we are grown more powerful in the rural districts, there need be no fear we will be able to secure whatever we are in justice entitled to when questions affecting our rights arise. I know personally we will never have a New York City in Marion. When we grow more powerful if we find this great enemy getting hold of it we will take him then by the nape of the neck and deliver him into custody; we will bind him. But if we are to undo what we did yesterday, I hope we will do it by a reconsideration vote. This would be an indirect method of undoing what we did yesterday. It is a weaving round the stump, to do a thing that we cannot, or do not choose to do, directly. Not that the work of yesterday was done so finally that it cannot be reconsidered; but I trust that if we are going to reconsider it; if we are going to do anything that will have that effect we will do it by a straight out motion to reconsider the vote we have taken. I cannot see a par-

ticle of argument in favor of the proposition of the gentleman from Tyler, and every argument he has adduced is against what he asks the Convention to do. I trust we will not undo our work; that we will not get alarmed about a state of things that may by possibility occur next century. The gentleman remarks that he does not expect to live to see. O, well, I am not going to trouble myself about imaginary evils that are coming when I am gone. I will provide against them so far as reason may enable me to do it.

MR. VAN WINKLE. Let posterity take care of it.

MR. BROWN of Kanawha. The gentleman from Tyler gives very great consideration to the Constitution of New York and the action of the people there. I confess I do not look at it in the light he does as supporting the principle he is seeking to establish here. The Convention have adopted—or, rather, have decided to adopt—a principle, on yesterday, after an elaborate discussion refusing to give what we sought to attain, a delegate from each county. Having refused that, this amendment of the gentleman from Tyler seems to me to be for the accomplishment of nothing but for the purpose of, in effect, discriminating between the counties. Now, while a man might be very ready to give a delegate to every county I do not see why we should undertake to violate another principle which we have now adopted of refusing to give a delegate to each county, in order to give it to only one of the few unrepresented counties. Now the proposition would only give delegates to one or two more counties, still leaving us with delegate districts. Well, now, if this principle should be extended to all the counties, I can see no sufficient reason for departing from that which we have adopted. This section constituting the house of 46 members, the last clause of it, does establish the fundamental principle that every section or small district, county or district, shall have a delegate. The last clause of the 5th section reads: "But every delegate district, and county not included in a delegate district, shall be entitled to at least one delegate." No matter how low its population sinks, it shall be entitled to at least one delegate. But under the proposition of the gentleman from Tyler if the county fell below 4000 it would be without a delegate. The principle of the ratio of representation is wholly departed from. It is ignored and the doctrine of unities is asserted in this section. Now, whenever we depart from the counties I must confess, having looked over this pretty carefully that I do not think you can well make better delegate districts than are made in this report. Unless

you go to the principle of giving each county a delegate I do not think you can better this by altering it.

There is but one case in which the principle of having the smallest counties united with counties adjacent and contiguous is not carried out in this report, and that is in the case of the counties of Nicholas and Webster. Webster has 1552, Nicholas 4770. Now Pocahontas is a smaller county than Nicholas, and it joins Webster; yet according to the principle that has been adopted and so much contended for by gentlemen who arranged the county representation, according to that principle as laid down in the report of the Committee on Fundamental Relations the counties of Pocahontas and Webster should have been united, and not Nicholas and Webster. Because, in the first place, they lie together; in the second place, it would have united the two smaller numbers, and not have joined Nicholas, which is a larger one. It is giving to Pocahontas, which has a smaller population than Nicholas one delegate, while Nicholas, larger than Pocahontas, has Webster associated with it. It is making the larger still larger and the smaller still less. But, sir, the relationship of the people of Pocahontas and Webster is not equal to the relationship that exists between the people of Webster and Nicholas: mountain ranges and barriers intervene between the two. It would be uniting two distinct peoples in one delegation; and therefore this principle of equality of representation is subordinated by its advocates to another principle—and very properly so.

So I think, taking all the reasons that can be offered to bear in support of this report on this topic; taking the relations of the people; having departed from the principle that each county shall have a separate delegate, you cannot do better than take it as it is. I think these delegate districts are the best delegate districts that you can devise, as the report stands. I therefore oppose the amendment as proposed.

MR. VAN WINKLE. Mr. President, I much prefer the report of the committee to the amendment of the gentleman from Tyler; and, as a general reason for this, that the report of the committee is applicable to any state of circumstances in reference to population that may arise, while the amendment offered by the gentleman from Tyler is absolute and cannot be changed. I do not intend to go at any length into this subject. I am satisfied with the remarks just made in reference to the main question involved; but I would like to give to the Convention a few figures. I find that

during the ten years preceding 1860, the period of the decennial census, the counties of northwestern Virginia increased over twenty-five per cent in population. I find that what are known as the southwestern counties increased something over twenty per cent. Now, sir, we cannot imagine that the increase of the whole of the new State will not be at least twenty-five per cent in the next ten years. That is, by the time when a new apportionment is to be made. If so, sir, and the house is continued at 46 delegates—I include all counties in this calculation—the divisor in the next apportionment will be 8260. Well, sir, in the counties tributary directly, or nearly so, to the Northwestern Virginia Railroad, from 1840 to 1850, which was before the ground was broken in the construction of the road and of course had not much reference to that the ratio of increase during that ten years was greater than twenty-five per cent. There had been a prosperous state of things generally in the country. The Northwestern Turnpike, from Parkersburg to Winchester, had been made; and the increase of population, which had been waiting for the facilities of that highway, was so great that it was about fifty per cent during that period. Well, sir, I feel confident that the advantages that we propose to hold out by means of our new institutions, and the very fact of separation from the rest of the State, justify us in looking forward to an increase of population throughout this whole State ranging from thirty to fifty per cent; and I believe the lowest of these percentages—certainly the average of them—would bring up the ratio for a member of the house of delegates of 46 to upwards of ten thousand. So that while we are in this degree of uncertainty as to what will be the divisor at the end of ten years, we ought not to fix a specific amount. The rule adopted by the committee to allow a delegate for a fraction over one-half is certainly a fair one if any counties are to be attached to other counties.

Now, sir, I would repeat the calculation more definitely that I endeavored to call attention to yesterday. If we take an average rate per cent of increase for every county in the State, you will see how rapidly you will work injustice to the larger counties, whether cities in them or not. Take a county of 2000 inhabitants. Now let them increase 25 per cent, and at the end of ten years it will be 2500. Take the gentleman's county of 6000. At the end of ten years it will be 7500. Well, now, it is with these figures—these positive quantities—we operate in reference to counties. The gentleman's county would have increased 1500 while this small county would have increased only 500, although the ratio in each

case is the same. If we are going to look forward, we ought to try to find out what is to be the probable state of things say five years hence, as representing the average of the whole ten years. If you will do that, you will find that even if the larger counties were now favored that at the end of five years even they would be disfavored counties, although their rate of increase was not greater than that of the small counties. But as the representation does not go by percentage but by actual numbers, the gentleman's county would have increased 750 while the other increased by 250. Then the one instead of outranking the other 4000 would outrank it 5300, and the relative disproportion would be greater. I do not doubt that every member of this Convention is actuated by a love of justice in this matter, and I do not hesitate to believe for one moment that even those who propose to give to these small counties a representative to themselves think there is a justice in that. It may be, sir, if we were capable of doing it; but when we see it works great injustice to others the same love of justice should teach us not to do injustice in order to do justice. We must get a medium somewheres between them and that is what the mode of representation in this report attempts. It proposes if they have one-half the ratio to give them a representative; if they have less than one-half they must vote with some other county. That seems to me equal justice to both. I do not think, sir, you could with any show of justice whatever in view of the principle that equality of representation is to prevail "as nearly as possible," give to those counties each a representative without making your house of delegates to consist of 100 members; and then, sir, if you did make it consist of 100 the county of Tucker would not, by the rule that one-half the ratio would give it a member, be entitled to one. The ratio would be over 3000 and Tucker is short of 1400. Now, in that view you would see how great the injustice would be to deprive others of a fair representation in order that there may be members where the claims are so slight. Not that you are going to deprive them of representation entirely but to subject them to the inconvenience, if you please, of voting with another county. That is all.

I have said more than I intended when I got up. I can only repeat that I think the report of the committee is something in the nature of a principle, while the proposition of the gentleman from Tyler is a rule. A principle will adapt itself to any circumstances; a rule is arbitarary and can only be worked out in one way.

The question on the motion of the member from Tyler was taken and it was lost.

THE PRESIDENT. Does the gentleman from Wood renew his amendment?

MR. VAN WINKLE. I propose to renew it in another shape. I offer the following, to come in before the 5th section:

"If the first elections of senators and delegates are held within six months after the 4th day of July, in any year, their respective terms of service shall be reckoned from that day; and if held within six months next preceding that day, in any year, their terms shall be reckoned from the 4th day of July next after such election."

If elected after the 4th day of July, their terms will be a little less than two years, not exceeding two years. I believe that meets the case, meets the objections that were made to the other.

MR. LAMB. I would ask, Mr. President, to lay the amendment on the table, to allow us to think about the matter until Monday.

MR. VAN WINKLE. I have no objections, sir.

THE PRESIDENT. What will you do with the section—pass it by?

MR. VAN WINKLE. O, yes, sir; there is no immediate connection between them.

The question was taken on the adoption of the section, and it was adopted.

The Secretary reported Section 6 as follows:

"6. After each census hereafter taken by authority of the United States, the delegates shall be apportioned as follows:

The ratio of representation for the house of delegates shall be ascertained by dividing the whole white population of the State by the number of which the house is to consist, and rejecting the fraction of a unit, if any, resulting from such division.

Dividing the white population of every delegate district, and of every county not included in a delegate district, by the ratio thus ascertained, there shall then be assigned to each, a number of delegates equal to the quotient obtained by this division of its white population, excluding the fractional remainder.

The additional delegates which may be necessary to make up the whole number of which the house is to consist, shall then be assigned to those delegate districts, and counties not included in a delegate district, which would otherwise have the largest fractions unrepresented. But every delegate district and county not in-

cluded in a delegate district, shall be entitled to at least one delegate."

MR. LAMB. I can only say in reference to this that it is the plan which has been finally adopted by Congress in apportioning representation in the House of Representatives of the United States. The matter of the principle of making that apportionment had been under discussion at different periods in the Congress of the United States since 1789 down to 1850. This plan was adopted as the most equal of any other that could be devised. As a merely arithmetical proposition giving us an adequate number in the house of delegates, it does, as near as possible apportion representation according to population. It does accomplish that result as an arithmetical proposition nearer than any other principle that can be adopted. These were the considerations which recommended it to Congress, where it was adopted by the act of May 23, 1850. These are the considerations which recommended it to the committee. It accomplishes another object. This rule avoids controversies in regard to the distribution of fractions. They are kept out of the legislative halls and conventions. It becomes thus a matter of figures simply. You will have no squabbling in your legislature about fractions because the figures will decide it according to the census; and if a question arises between two counties, the county which has the largest fraction gets it. It is certainly fair that where you are to distribute to fractions, the members should go to the counties which have the largest fractions. It is simply the principle of the whole matter.

MR. RUFFNER. There seems to me a propriety in authorizing the State to take a census and make the apportionment on it. In order to bring this idea before the Convention I would move that after the words "United States" the words "or of the State" be inserted.

MR. LAMB. I do not know that there can be any objection. The Committee considered the question of making an apportionment according to a State census, and of requiring a State census; but the great expense of taking the census was one great objection to it. Then as a census is provided for by the Constitution of the United States every ten years, as long as the Constitution of the United States operates over West Virginia, and as long as West Virginia exists it will operate over it, a census has to be taken under that Constitution every ten years. We supposed this was sufficiently often to bring up this question of representation with

all its embarrassments and difficulties and ill feeling. I have no particular objections to the gentlemen arranging that matter as they see proper. If they want the census and apportionment oftener than each ten years, it might be necessary to make such an amendment as the gentleman proposes. If the Convention should determine, however, that once in ten years is often enough to bring up this question, why, as long as the Constitution of the United States exists we will have a fair census by which we can make our apportionments without any expense incurred by the State in taking it.

MR. VAN WINKLE. While I should be disposed to object to the provision which the gentleman from Ohio has alluded to absolutely requiring that a census should be taken intermediate between the United States census on account of the reasons he has stated, that it is an expensive matter, yet I apprehend that the amendment as offered by the gentleman from Kanawha is not objectionable—at least it is not so to me. If circumstances should arise such that the people should demand of their representatives that they should order a census to equalize the representation, it would leave them free to do it. I do not think, however, sir, that I would propose the amendment in this connection nor make it one absolutely requiring a census to be taken. But if that matter is to be left to the legislature, the people instructing them, I shall have no objection to the amendment.

The question was taken on Mr. Ruffner's motion, and the amendment rejected.

The section was then adopted.

MR. IRVINE. I would like to have one word to say before this question is taken.

The vote adopting the section was reconsidered by general consent.

MR. IRVINE. I dislike very much to intrude myself on the house under the circumstances. I do not rise to make a speech, nor would I insist on having anything to say on this occasion but for the fact that it seems to me there is a flaw in this section, which has, I suppose, if it is a fact, escaped the notice of the vigilant chairman of the committee. This 6th section may work possibly. If it does—if you can work out this section so as to apportion the representation, it would be the result of an accident, it seems to

me. The ratio of representation here now is 6618. Well, then, you will assign one representative for every 6618. When the apportionment is made in future, the ratio will be much larger; but that does not affect the argument. So for every 6618 you have one provision. You are guided, then, by the ratio in all the districts and large counties in apportioning the representation. Suppose that there were no fractions at all. Then you would assign to each district and to each large county one representative for every 6618 inhabitants; no fractions. In additions to this—I adopt the 6618 for the purpose of illustration—in addition to this, you are to assign to all the small counties where the population exceeds half of this amount a representative, yet at the same time to be confined to 46 representatives. This thing will not work out.

MR. VAN WINKLE. Will he permit me to tell him he is mistaken. I have tried it on six or seven different ratios, and it always works out.

MR. IRVINE. Well, sir, it is perfectly obvious to my mind that it would be the result of accident. It might work out in a given instance. But suppose the fractions were not sufficient to make up for the deficiencies, the thing would not work at all. In consequence of their being large fractions to compensate for allowing to small counties where they exceed one-half a representative, it might possibly work; but this would be the result of accident. It might so happen that it would work. For every 6618 inhabitants the counties are entitled to one representative. If there were no fractions it would not work at all; because in a number of instances where there was a great deal less than 6618 inhabitants you would be entitled to a representative. It might accidentally work out right. The fractions might be sufficient to make up the deficiencies, but this would be the result of accident, and I do not think the working of any provision in the Constitution ought to depend on accident.

I have expressed myself rather badly on the occasion owing to embarrassment; but it is clear to my mind if it works out it will be the result of accident.

MR. LAMB. The gentleman's objection, of course, is a radical one to the whole section. If there is force in it, it is necessary for the Convention to dispense with the whole. But I think the objection made is founded altogether on a mistake, and that the gentleman's own statement makes the mistake apparent.

He proceeds, in the first place, to suppose that there are no fractions. Now if there are any counties with a less number than 6618 there are fractions. The population of such counties come into the column of fractions at once. So far as those counties are concerned, they are all fractions. So that his supposition is inconsistent with itself. That the number might be so exhausted by making up one delegate to each of these small counties that you would not have any delegates to assign to larger ones, as well as I can see into his objection . . .

MR. IRVINE. I only supposed for purposes of illustration that there were no fractions in order to show it would not work when there were no fractions.

MR. LAMB. Then if there are no fractions, there can be no counties of less than 6618, or exactly twice that, or exactly three times that.

MR. IRVINE. I may explain again to the gentleman. I was speaking of fractions in those cases where the counties or districts would be allowed a representative, one or more representatives; then there may be fractions left. I speak of the fractions in those cases in which the counties are entitled to one or more representatives as being sufficient to make up for the deficiency in a number of counties which would be entitled to a representative where there were not 6618 inhabitants. Thus, 20 counties would be entitled to 20 representatives. Well, then, suppose the other counties should contain 3618 inhabitants. In that case it certainly would not work, because you would have a great many more than 46 members. I cite this merely for the purpose of illustration. If there were twenty counties having precisely 6618 inhabitants, and the other counties had 3618 inhabitants, all the other counties would be entitled to a representative each, and the number of representatives would exceed 46. So that if the thing would work at all, it would be the result of accident that the fractions in the counties which are entitled to one or more representatives would be sufficient to make up any deficiency.

MR. LAMB. There is a great deal of difficulty in discussing a matter of this kind which is to be decided by logarithms and algebra, and not by a speech on the floor of the Convention. But I think I can satisfy the gentleman that under this section there cannot possibly be any difficulty in working it out.

You have 44 counties; you have a house of 46. If you make a number of delegate districts, say six or any other number, you reduce the number of counties. We have made in this proposition six delegate districts. We have six districts and 21 counties, making 37 districts and counties to which 46 members are to be distributed. Now the provision is that each one of the 37 shall have at least one delegate. You start with that. But says the proposition, every delegate district and county not included in a delegate district shall be entitled to at least one delegate. This is the exception. Whatever may be the effect of other provisions that is to govern. Then, in any way you can fix it, you secure some representation to every county and to every delegate district. As long as you have got 46 members to distribute and 31 counties and six districts to give it to. Or if you destroy the delegate districts entirely you have 44 counties to give it to. The balance merely operates on the excess. The gentleman's difficultiy would exist if you had 44 counties to assign delegates to and were to adopt the motion that was suggested the other day to make the house 36. I can imagine a possible case in that state of facts on which you could not work. But there is no possible case where the number of your delegates exceed the number of counties in which this "won't work." It may not work equally unless you have considerable excess but some way or other that will work wherever the number of delegates to be assigned is equal to the number of districts and counties to which they are to be assigned. I state this as a clear arithmetical, or algebraic or logarithmic proposition. As to the thing merely working in case of accident, I would inquire if the gentleman has ever tried to work it out in any possible state of the case?

MR. IRVINE. I have not thought of it until this morning.

MR. LAMB. Well I have; and I worked it out in a great many cases and I have found no difficulty in applying it. I have here a paper submitted to the committee in which we apply the principle to a house of 42, a house of 45, of 48 and of 50 members; and I have figured out since the application of it to a house of 54 and a house of 46. There is no difficulty at all in working it out. It always comes out. The gentleman on my right (Mr. Van Winkle) has applied it in sundry cases in which I have not. He applied it to the 39 counties or to a house of odd numbers, and there was no difficulty in working it through. But the gentleman's difficulty would only exist if you had a house much less in number than the

counties or districts to which you had to apply your apportionment. If you had a house of 36 and were obliged to apportion it among 44 counties and districts, there might be a possible case. Well, it might require a greater difference than that. But there can be no possible difficulty in working it out as a sum in arithmetic where the number of delegates is equal to the number of districts to which you have to apportion them. That I set down as a fixed fact at any rate. As long as you have got 46 delegates and only 44 counties, there can be no possible difficulty of working it out.

The question on the adoption of the section was resubmitted and it was adopted.

MR. BATTELLE. Before we adjourn, I wish to give notice to the Committee on Education to meet in their room Monday morning at half past eight o'clock.

MR. HERVEY. I wish to inquire whether the chairman of the Committee on the Legislative Department designs to move the adoption of the whole report now or let it lie over until it comes up for revision. The reason I make the inquiry is this: I handed him a paper this morning which is designed to be a substitute for part of this report and I hope the vote will not be taken until that substitute is printed and before the members.

MR. LAMB. I suppose the proper course with regard to this report will be after we have considered the report section by section and adopted such amendments as may seem expedient to the Convention, to lay over the whole report.

MR. SINSEL. Have it reprinted, won't you?

MR. LAMB. Well, that may be necessary.

MR. STEVENSON of Wood. O, Yes; it had better be printed.

MR. LAMB. But I don't think we ought to hurry the final vote on a report of this nature. Even after we have gone over it section by section and amended and made it as good as we can get it. I dare say there will be still an abundance of defects in any piece of our work.

MR. HERVEY. I then understand, Mr. President, there will be no motion to adopt the report at this time?

MR. LAMB. Only to go over it section by section and adopt each section; and it will finally come up some other time.

MR. HERVEY. Yes, sir.

The Convention then took a recess.

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AFTERNOON SESSION, THREE AND A HALF O'CLOCK, P. M.

*The Convention re-assembled.

Mr. Ruffner presented six petitions, signed by one hundred and fifty-nine citizens of Nicholas county, stating that no election was held in said county in October last for a delegate to this Convention, and praying to be represented here by John R. McCutchen. On motion of Mr. Ruffner, John R. McCutchen was admitted to a seat in this Convention, as a delegate for the county of Nicholas.

Mr. McCutchen appeared and took the oath embraced in the ordinance for the reorganization of the state government.

Mr. Van Winkle moved to amend the 7th section by inserting in the 69th line, after the words "two delegates," the words "of whom the county of Wood shall elect one delegate, and the counties of Wood and Pleasants shall together elect one delegate."

Pending the consideration of which,

Mr. Warder moved to reconsider the vote by which the 2d section was adopted, and the question being upon reconsiderating, it was decided in the affirmative.

Mr. Haymond moved to amend the 2d section, by striking out the word "forty-six," in the 7th line, and insert "fifty-six."

Mr. Lamb moved to amend the amendment by striking out "fifty-six," and inserting "fifty-four."

Mr. Lamb then moved to lay all the motions on the table for the present, which was agreed to.

And, on motion of Mr. Hervey, the Convention adjourned.

*As reported in the Journal of the First Constitutional Convention, 1861-62.

†The seventh section of the Report of the Legislative Committee was taken up and reported:

7. Until a new apportionment be declared under the next census to be taken by authority of the United States, the counties of Calhoun and Gilmer shall form the first delegate district; Clay and Braxton the second; Pleasants and Wood the third; McDowell, Wyoming and Raleigh the fourth; Tucker and Randolph the fifth; and Webster and Nicholas the sixth. And the apportionment of delegates shall be as follows:

To the third delegate district, two delegates; and to the other five, one each.

To Barbour, Boone, Brooke, Cabell, Doddridge, Fayette, Greenbrier, Hancock, Jackson, Lewis, Logan, Mason, Mercer, Monroe, Pocahontas, Putnam, Ritchie, Roane, Taylor, Tyler, Upshur, Wayne, Wetzel and Wirt counties, one delegate each.

To Harrison, Kanawha, Marion, Marshall, Monongalia and Preston counties, two delegates each. And to Ohio county, three delegates.

Mr. Van Winkle moved to insert after "to the third district, two delegates," in the second paragraph, these words: "of whom the county of Wood shall elect one delegate, and Wood and Pleasants together shall elect another delegate.

After considerable discussion of this amendment,

Mr. Warder moved (such a motion taking precedence) to reconsider the vote by which the second section was adopted, in order to afford opportunity for a motion to strike out "forty-six" as the number of the house of delegates, as then proposed, and substitute "fifty-four."

The motion to reconsider was agreed to.

Mr. Haymond then moved to strike out "forty-six" and substitute "fifty-six."

Mr. Lamb moved to amend the amendment by substituting "fifty-four."

The Convention then adjourned.

†As reported in the Wheeling Intelligencer, January 13, 1862.

XXVII. MONDAY, JANUARY 13, 1862.

The Convention was opened with prayer by Rev. Gordon Battelle.

President Hall in the chair.

MR. HAYMOND. Mr. President, I ask leave to withdraw my motion made on Saturday to increase the number of the house of delegates from 46 to 56, for the present.

MR. SINSEL. Mr. President, it seems to me according to the rule established here and the usage in such matters that the vote on Saturday evening was out of order. There was a motion then before the house. It had not been determined and was still there. If I am correct in that, why the motion this morning would require the amendment of the gentleman from Wood and not on any amendments offered afterwards.

THE PRESIDENT. The Chair is of opinion that the motion to reconsider was not out of order; that the work which we were then doing depended very much or entirely on the numbers to be inserted in the member's resolution which determined the Convention to reconsider.

MR. SINSEL. Mr. President, I do not understand it in that way. I understood that the matter under discussion at that time was how they should regulate the two representatives assigned to the counties of Pleasants and Wood. We had decided on the number 46. The committee had reported how the 46 should be disposed of; and that amendment was in reference to the disposition to be made of the two representatives which made up the 46.

THE PRESIDENT. The gentleman from Taylor will remember that if the increase contemplated by the reconsideration occurred and was made there is no use for the controversy between the counties of Pleasants and Wood; that the difficulty would be removed by the insertion of the larger number. Hence the motion to reconsider and go back prepared for the work in Wood and Pleasants, was proper, in the opinion of the Chair.

MR. SINSEL. It seems that I have failed to make myself understood. The point that I raised was this, that at the time the motion was made to reconsider, we had under consideration the disposition of the delegates assigned to the district of Wood and Pleasants.

MR. VAN WINKLE. The rule in Jefferson's manual is that when a motion has been once made and determined in the negative, it shall be in order for any member of the majority to move a reconsideration, and such motions shall take precedence. It is perfectly in order, sir.

THE PRESIDENT. Is the gentleman from Ohio aware that the amendment of the gentleman from Marion has been withdrawn?

MR. LAMB. Of course both amendments fall unless I renew my motion, which I will do, to strike out 46 and insert 54.

THE PRESIDENT. The question is on the motion of the gentleman from Ohio.

MR. HAYMOND. I now offer an amendment to the amendment of the gentleman from Ohio by substituting the following:

"RESOLVED, That the house of delegates shall consist of fifty-nine members, to be divided among the counties as follows:

Ohio county four delegates; Marshall, Marion, Monongalia, Preston, Harrison, Wood, Jackson, Barbour, Mason, Kanawha, Greenbrier and Monroe counties, two delegates each; and Hancock, Brooke, Wetzel, Taylor, Ritchie, Doddridge, Wirt, Roane, Calhoun, Gilmer, Tucker, Pleasants, Tyler, Lewis, Braxton, Upshur, Randolph, Putnam, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette and Raleigh, one delegate each."

THE PRESIDENT. The question is on the amendment to the amendment.

MR. STUART of Doddridge. I would simply state that the number 59 is a new number and one about which no calculations have been made; and until they are we know nothing about it. We had prepared ourselves for the motion of the gentleman from Marion to substitute 56, but here comes in 59, and we are just as unprepared to consider that question as we were Saturday evening.

MR. SINSEL. Mr. President, I feel it again my duty to oppose this amendment.

MR. LAMB. Will the gentleman excuse me for one moment. I would suggest that the only course now to be taken would be to lay the matter on the table, have the different schemes printed to allow us to act intelligently upon it when it does come up, if this should meet with the concurrence of the Convention. If that

course should be taken we have plenty of other business to act upon in the meantime. There is a number of the sections of this report that have not been considered. A number of amendments have been offered to this report in regard to other matters which have not been disposed of. Just as the Convention please, however, I have no wish to make a motion to interfere with the remarks of the member from Taylor.

MR. SINSEL. I have no objections to your motion. But, still, Mr. President, I am opposed to the motion of the gentleman from Ohio because this amendment offered by the gentleman from Marion amounts to nothing more than this, to give each of the counties now a separate delegate, the county of Greenbrier two, the county of Monroe two, the county of Ohio four and Wood two. Wood has two, so that leaves it just as it is in the report of the committee, merely changing these other counties, giving each one of them a representative. And so I cannot see what can be gained by printing this, nothing more than expense, because we all know at once what it means giving to each of these little counties a representative, to McDowell two, Greenbrier two, leaving the county of Wood but two and Pleasants one. The county of Ohio an additional one and Jackson two. That disposes of the question. It does seem to me every member of the Convention can understand that; and it would be unnecessary delay and expense to have these different plans printed.

MR. PARKER. Mr. President, a moment, I would inquire, for information. My recollection is that on Saturday there was but one reconsideration, which was a reconsideration of the vote, as I understand, passing that section. Well, then, to that was the first amendment as I understood offered by the gentleman from Wood. That was voted down. That was to substitute 54 for 46. Well, that was the amendment to the section of the report of the committee. On that amendment, then, there was an amendment to the amendment, offered by the gentleman from Doddridge. That also was voted down, so that both amendments were then voted down and the vote was taken on the passage of this section. Well, now, there was one reconsideration on Saturday, of but one question, and that was the reconsideration of the vote the section of the report as reported by the committee. Now, what the question is I do not perceive unless I am under a mistake, and I rise for information, if there was but one reconsideration, and that was on the passage of the section as reported. There is no motion to re-

consider that as yet. Well, that being so, that is the only way this can be brought up again is by reconsidering. The 8th rule is explicit on that. "A question being once determined must stand as the judgment of the Convention and shall not again be brought into debate."

MR. STUART of Doddridge. Is it to lay on the table? I understand a motion to lay on the table is not debatable.

MR. PARKER. I merely rise for information. If we are not right on the record there is no use going on.

MR. VAN WINKLE. I do not think the interposition of these strict techniques is worth while. The vote was to reconsider the vote by which 46 was fixed. The house agreed to reconsider it. We have adopted the section. The section is again open for amendment, of course. It is very evident that if two votes had been necessary to effect the purpose, if the Convention voted one vote they would have voted the other. While these rules are intended to facilitate business, certainly they need not be insisted on when the effect will be to hinder business.

MR. PARKER. I would ask, Mr. Secretary, to turn to the journal and see how it stands.

The Secretary read Mr. Warder's motion, to reconsider the vote by which the second section of the report had been adopted.

THE PRESIDENT. The Chair would remark when the question was brought up his first impression was that it would require two votes to prepare for the amendment; but it was then suggested that it would not require two votes, and the Chair was unable to see any object, but understood the purpose was to reach the very matter we are now investigating. The Chair is under the impression that no possible good could result from a second vote. It would only be a loss of time. However, the Convention might determine to review it all.

MR. PARKER. It would strike me as a matter of order that we should keep our record right, and certainly this is a rule that is clear. And it is perfectly clear now, from the reading of the Secretary, that it was the reconsideration only of the vote which passed the section, not touching the amendment. Well then that judgment which we passed on this first amendment of the gentle-

man from Wood was decided in the negative and so stands on the journal. I would inquire how that stands?

THE PRESIDENT. The gentleman will take his seat. The gentleman has a perfect right to appeal, not to argue the question.

MR. PARKER. I would take an appeal to the house. I would ask for the Secretary to read the record of the final disposition made of the amendment offered by the gentleman from Wood, which was to substitute 56 for 54.

MR. VAN WINKLE. The gentleman is in error. I did not offer the motion at all. I did not offer the 54. The gentleman from Ohio offered it.

MR. PARKER. I am corrected. I thank you for the correction.

MR. VAN WINKLE. Well, sir, let us have the vote on the appeal.

THE PRESIDENT. The gentleman will commit his appeal to writing, so that the Convention will understand what it is they have decided.

MR. CALDWELL. Would it not be in order to move to lay this appeal on the table? I will make that motion; and I do it without any disrespect to the gentleman from Cabell, but only to save the time of the Convention.

THE PRESIDENT. The question is on laying the appeal on the table.

The question was taken, and the motion to lay on the table was agreed to. The question recurring on the motion to lay the amendments on the table and print, the motion was rejected.

MR. SINSEL. Mr. President, I am opposed to the amendment of the gentleman from Marion, and also to that of the gentleman from Ohio; and in what I have to say I wish it to apply to both. The proposition of the gentleman from Marion is to give to each one of the counties a representative. Now, upon examination it will be found that there are some twenty counties lying in that end of the State that lack the number now necessary to give them a representative. Commence with McDowell. It has a population of 1535; and upon the 56 proposition it would then fall short of having the ratio, 3901. It would lack 3901 of having enough to entitle it to a representative were the number increased to 56.

Still worse if increased to 59, or nearly as bad. With a house of 54 McDowell would fall short 4102. The county of Wyoming, with a population of 2797 would be entitled to one representative under his proposition, and she lacks 2639 with a house of 56. With a house of 54 she would lack 2840. So either of these propositions would be unjust, to give each of these counties a representative. The county of Raleigh, with a population of 3291 would be entitled to one, while she would fall short 2165, and still worse with a house of 54. The county of Calhoun, with a population of 2492 would be entitled to a representative, when she lacks 2944. Gilmer, with a population of 3685 would be entitled to one, while she falls short 1751. The county of Braxton would be entitled to one, which she has already, I believe, with a population of 4885. She falls short 551. Clay, with a population of 1761 would be entitled to a representative, while she would lack 3675. Tucker, with a population of 1396 would be entitled to a representative, according to his arrangement, while she is minus 4040. Randolph would have one, with a population of 4793, falling short 643. Webster, with a population of 1552 would have a representative, while she lacks 3884. Nicholas, with a population of 4470 would have one, while she would lack 966. Boone, with a population of 4681 would be minus 755. Logan, with a population of 4789, would be minus 647. Pocahontas, with a population of 3686, would be minus 1750. The county of Roane, with a population of 5309, would be minus 127. Wirt, with a population of 3728 would be minus 1780. The county of Monroe, with a population of 9526 would be entitled to two representatives. She would fall short 1346. The county of Greenbrier, with a population of 10,499, would be minus 373, with a house of 56. With a house of 54 she would have two also and then she would be minus 775. Pleasants, with a population of 2926 would be minus 2510 with a house of 56; 2711 with a house of 54. Doddridge, with a population of 5168 would be minus 268 with a house of 56; with a house of 54, 469.

Well, now these counties in the aggregate make 82,969 of a population, which would have according to that plan twenty-two representatives when, in fact, they would be entitled to only fifteen, a gain of seven representatives with a house of 54. With a house of 56, they would fall short of the population to entitle them to representatives 36,623. With a house of 54 they would fall short 41,045. Now, is there any justice in that?

One or two figures on the other side. The other counties would exceed what would entitle them to a representative except

Hancock and Brooke and it seems to me one other county that comes within. Tyler lacks some of having it, and these others lack but a small amount. These counties all lie in one end of the State, or nearly so; and worse than all others these little counties are decidedly Secession in sentiment and feeling.

I would like to know if this Convention is going to deal out that kind of liberality towards their enemies? When this Rebellion is put down and these counties come up and vote for their candidates freely, who would be elected? No one would be returned from any I have named, except Pleasants and Doddridge, but Secessionists or sympathisers with them. We are then here to take in connection with that the fact that the other counties lying in that part of the State favor Secession but have the number sufficient to entitle them to a representative. They would return Secession sympathisers, and the legislature of the State would be ruled decidedly by the Secessionists while they would have only about one-fourth of the population of the State. Is there any justice in that? It does seem to me from the utterances of some persons on this floor, that they seem inclined to bear down pretty hard on the Secessionists. I was always in favor of giving unto them their just dues; of depriving them of no rights they should enjoy; but it seems to me I am utterly opposed to giving all the power of the State into their hands while they are entitled to about one-fourth of it. Wherever they can elect a Secessionist on fair and equitable principles, with a fair ratio of representation, I have no objections to it. I am the last one who ever would complain of it. But I am utterly opposed to giving the power of the State, taking it from the loyal citizens and handing it over to the Secession districts.

Any one can see that what I have stated here is fact. Who denies that McDowell, Wyoming, Raleigh, Calhoun, Gilmer, Braxton, Clay, Tucker, Randolph, Webster, Nicholas, Boone, Logan, Pocahontas, Roane, Wirt, Monroe and Greenbrier—add to that Barbour and many others—are all dominated by the spirit of the Rebellion, and you are proposing to give them seven more members of the house of delegates than they are entitled to. You are saying to the people in the loyal part of the State that it shall take two men to represent them while in the disloyal districts one man shall have equal power. It is giving them an advantage they have no right to, and I am opposed to it.

I am in favor of a house of 46. I would consent, to make it look more fair for Greenbrier to add another to that county, but to adding to any other county, I am opposed to.

MR. IRVINE. Mr. President, I only rise for the purpose of making a short explanation. The arrangement proposed by the amendment would do great injustice to my county. The county of Lewis is the largest county—has more inhabitants—than any other county that is not entitled to two representatives. Now, I will show in what the injustice consists. According to the arrangment, it is proposed to give to the county of Ohio four representatives; to the county of Lewis one. The county of Ohio has not three times the population of the county of Lewis. But instead of that, they propose to give to the county of Ohio four representatives and to the county of Lewis one representative. There is no justice in that. If the county of Ohio had three times as many and a large fraction over, I would not complain; but when Ohio has not three times as many inhabitants as Lewis, to give to Ohio four representatives and to Lewis one, I contend would not be doing my county justice.

MR. HAYMOND. Mr. President, it will be seen by examining the resolution I offered that I have given to the county of Ohio four members; that I have given to all the counties where the population exceeds eight thousand two members; which leaves Lewis county with only one member. When I first came to this city I was opposed to Ohio having more than three members. I believe that the county of Ohio should have been satisfied with three members; but, sirs, when I come to look around this city and see this noble city, with her manufactures and her work-shops, and when I see the surrounding improvements around this city, I have come to the conclusion to give her four members. Mr. President, how was this noble city made? She has been raised by the hands of the general government and by the hands of the state government to what she is. She is now a mighty and powerful city for western Virginia. The general government gave her the National Road, and this house we are in. The state legislature has conferred on her many advantages. For a long time she contained all the banking capital in western Virginia. And from those considerations, and seeing her improvements, I came to the conclusion to give her four members; and I now ask her delegates in this Convention to come and go with me to the mountain counties and see if we cannot improve them, that we may bring them

side by side in improvements by the great county of Ohio. Sir, I desire to see those hills and mountains of West Virginia improved. I desire to see them cleared out; to see the blue grass and clover growing in the highest mountains in western Virginia, and they covered with cattle and sheep; to see manufactures springing up all over this country, not only in Wheeling but all over West Virginia. That must be done to make us a great and powerful state and counties. I call upon men to look around them and expand their minds throughout the borders of this new State. Sirs, the county that I represent in part is a manufacturing county. She is full of mineral, and she has the greatest water-power in the world. She is better calculated for manufacturing than Ohio. She has all the material there for making glass; she has the material for making glass sufficient to supply all the markets of the world. Why not give it to us?

Sir, I ask my friend from Ohio to go with me into the mountain country in forming this Constitution as a liberal constitution and induce men of capital to come among us and improve these hills by clearing them out and bringing up manufactures. Sir, I voted the other day to increase the number of the house from 46 to 54. Here I differ with my colleague. I was sorry for it. But I intend to leave him to vote as he sees proper and I will do the same. He said he could not vote to increase it; that he would be afraid to go home to his constituents; that he did not come here to represent the hills but the people. I am here to represent the people and the hills; and I shall not be afraid to meet my constituents there, sir. No, sir; they will not meet me with a rope to hang me; but they will meet me and take me by the hand and say, "Well done, thou liberal soul; we wish we had more of your kind." (Merriment.)

(Mr. Stuart of Doddridge in the chair.)

MR. DERING. I was opposed originally to increasing the number of the house of delegates any at all. But, sir, as the Convention progressed, I found that an increase of that number was an inevitable fact and a foregone conclusion. The house having come to that conclusion, I myself, when the facts were developed came to the conclusion that every county in this State should have a delegate. I think, sir, it becomes the Convention to be magnanimous with the little counties which have a small population now and grant to each a member of the house of delegates. And I think, sir, by attaching the little counties to the larger ones, you will deny

them a representation in the house of delegates. For instance, sir, the member from Tucker tells me that they have been attached to the county of Randolph in the election of their delegates to the general assembly. He says they have been virtually without any representation in their county; that all the legislation for that particular section of country has been in favor of Randolph and not one iota in favor of Tucker. It is virtually, sir, depriving these little counties of a representation in the general assembly when you attach them to larger ones. They over-ride, they eclipse them; and the interests of the little counties are entirely lost sight of. Sir, we cannot adhere to any iron rule of figures in fixing representation. I would be in favor of basing it upon white population, but it is out of the question. Every calculation that has been made has departed from that rule; and in many cases we have the greatest injustice done to the various counties. We cannot adhere to any iron rule in fixing a basis of representation. Let us, sir, be magnanimous to the little counties and give to each a delegate and give to Wood an additional delegate. We have increased the whole number in the house of delegates to 54. I would like to see that body respectable in point of numbers and by weight of talent; and it seems to me we might come to that conclusion and do justice to the little counties making a respectable house and await the course of future events to bring up these little counties to a proper apportionment, when representation with some propriety might be based on white population. These little counties that you are ignoring, you are doing them a manifest injustice now. It will be but a few years until these hills will all be cultivated and they will be full of a thriving industrial population; and then, sir, under a re-apportionment you can apportion on the basis of white population. I am decidedly, sir, in favor of giving to these little counties each a delegate. You increase the lower house only a few and do justice to Wood and Greenbrier and give them an additional delegate.

You cannot—again I say, Mr. President—fix upon any settled figures that will give an exact proportion of representation according to white population. You have to depart from the rule. Let us, then, be generous, embrace the great principle of justice to all the counties in our State; and under the fostering care of this new state government these little ones will grow up by the side of their sister counties by the time the re-apportionment will arise they will be entitled to a delegate on the apportionment principle. With these views I shall vote to give to each of these little counties

a delegate, thus embracing the principles of justice and according to Wood and Greenbrier the additional delegate, which will make our house, not cumbersome in numbers, but will give it respectability.

MR. POMEROY. I understand the question before the house is to increase the number of the house of delegates to 59.

MR. STUART of Doddridge. The question is on the amendment to the amendment, which increases the house to 59 and gives to the various counties, naming them, certain numbers of delegates.

MR. POMEROY. Well, Mr. President, I only offer a few remarks. I am opposed to that motion. I voted against the increase when the question was before us before. I wish to stand right before the Convention and before the people on this subject. I am not opposed to increase if it can be done in a fair and equitable manner, but I am opposed to increasing the house to 59 with the probability that a number of other counties will come in which in the same proportion will increase the house to that number that we will have nearly as large a house as the large states around us, while we will be one of the smallest states in the Union as regards population. I am opposed to it on the ground of unnecessary expense of a body so large; and because a large body does not move as rapidly as a small one in the transaction of business. Though I am not a compromising man, I think if we could compromise on the number 54 we could give to nearly all the small counties a member, which I am in favor of. But it will not do to carry that matter to an extreme. It will not do for us to go before the people and say that we thought a man in one county should be counted as much as five men in another county. There is no fairness in that. If you would give to Tucker, for example, a member, why, then, one man in that county will count as much in the house of delegates as five men in some other counties. That would be carrying our charity towards those counties to a point that I am not willing to extend. I am for favoring the smaller counties as far as we possibly can without too great an increase in the number of the house. As has been stated by the gentleman from Tyler, it is certainly unfair to leave large fractions unrepresented in the larger counties to accomodate these people who are in the sparse counties. It appears to me that 54 would about accommodate all parties. It would give all the larger counties two members and nearly all the smaller counties a member; and I think the Conven-

tion might be harmonized on that number. But if you run up to 59 we cannot expect that these counties will come in. I have not applied arithmetic to it, but I suppose it will make a house of about 75; a much larger house in proportion to our population than any of the great states surrounding us. And I shall vote for a body of about such a number as this body. This Convention is about as capable of transacting business as a much larger one. There appears to be a general opinion that we are capable of transacting business. Now, if there is any great good to be gained by increasing, why should we go for it beyond that which has been suggested. I would be willing to go for an increase to 54, as my friend from Monongalia . . .

MR. DERING. That will only give an increase to Wood and Greenbrier.

MR. POMEROY. I understand the motion before the house is to increase the number to 59, and therefore I am opposed to increasing to 59. And I will show that I am so opposed, not only by what I say but by my vote. If we can find that it can be distributed so as not to do injustice to any party, I am not opposed to 54. But I do not believe it can be made clear that one man in Tucker is as good as five men in Brooke. He ought to have the same voice in the legislature they would have. If so, there is a great improvement in men by migrating in that direction, and I would advise my friends in Brooke to increase their value by migrating to Tucker. And while I wish these small counties should be represented, and am in favor of doing justice to them as far as we can, I think it would be impossible to give every county a representative without increasing the number to a greater number than there is any necessity to be. Legislate for the interests of the people. The people have to bear the burden and let us make a house that will represent respectably any number, but not larger than is actually necessary, when no real good can be accomplished by so doing. Therefore I will vote against 59.

MR. LAMB. From the appeals that have been made to us, Mr. President, that we should be "just" to the small counties, that we should be even "magnanimous" to them, an outsider might suppose we were about to perpetrate some great injustice on this section of the State. I am not willing that our propositions should rest under that imputation. What is this "injustice" which we propose in the plan of apportionment which I favor, to perpetrate on the small

counties? What is the great hardship which justifies these appeals of gentlemen to our magnanimity and liberality? We propose to be not merely just to the small counties, but we do intend to be magnanimous and liberal towards them. Upon the scheme of representation which I favor, the fundamental principle of which is one that lies at the basis of the whole scheme is that whenever a small county has a white population equal to one-half the ratio of representation it shall be entitled to a full delegate. Is this any hardship? Lewis county and Kanawha county and Ohio county get one representative for the full ratio. Only those counties we propose shall have a representative when they have a population equal to *one-half* the ratio. Is not this fair? Is it not more than fair—liberal? Is this doing "injustice" to these small counties?

MR. DERING. Would not they have to wait until there is a re-apportionment?

MR. LAMB. They would have to wait till their population equalled one-half the ratio. If the gentleman wants a re-apportionment next year or the year following, if there is any injustice in postponing till 1870, there would be no hesitation in giving it to him. Certainly they have to wait for a full delegate until it appears their population is *half enough* to entitle them to one. There is where we have drawn the line in this scheme.

Sir, they will be secured in certain cases twice as favored terms as are giving to the larger counties. But this is not sufficient! The proposition now is, in substance, to give them a full delegate although they have not a population equal to *one-fourth* the ratio. It is pressing the matter too far.

I would be liberal to these small counties, but I would be just to the larger ones. I would pay some respect to the principle of apportionment, not merely by county lines but according to the principle of density of population. For that is the only true, the only fair, the only just principle. And though we cannot carry it into precise operation in all cases as an arithmetical proposition without altering the boundaries of the counties, as was suggested by the gentleman from Kanawha, it is no reason why we should not adhere to it as far as practicable to carry it. The argument upon this subject has been very well stated by the gentleman from Taylor. He has anticipated much that I would have said. But instead of descending to particulars, as he has done, let us present the general result of the measure which is now before the house.

Mr. President, there are twenty counties which have a population of less than the ratio. To these it is proposed to give twenty members. The aggregate white population of these twenty counties is 72,751. If they are assigned a member each it will be one for every 3637. The other twenty-four counties have a population of 231,682. If the proposition of the gentleman from Marion should carry they would have 39 delegates, or one for every 5940. Here, then, is the short-hand of this proposition: that 5940 men, citizens, in one section of the State are to count as much as 3637 in another section of the State.

Mr. President, this is just adopting the three-fifths principle. It is just adopting the principle to which I referred the other day in the Constitution of the United States by which five slaves count equal to three whites. Five of us here in the populous section of the State are to count only as the equal of three men there. Can the gentleman from Marion on my right (Mr. Haymond) go back to his constituents and tell them that he has put such a principle as that on the thirteen thousand inhabitants of that county? I am not going before my constituents with a proposition of that kind and to ask their acceptance of it.

This is not pointing out the extreme cases, but it is the general result. Comparing the twenty counties with the twenty-four counties. If you go to the extreme cases, you will find, for instance, that Kanawha county has just about ten times the population of Tucker. If Tucker gets one delegate, Kanawha ought to have ten. He gives Kanawha two. A white man in Kanawha is equal only to one-fifth a white man in Tucker. And this is the state of things which under the operation of this system of regarding county lines instead of white population you are to attempt to engraft in the Constitution of this State! We are to go back again to the old system which we combatted before 1830—a system which the people of the northwest under the leadership of Phillip Doddridge fought for fifteen or twenty years—a system of apportioning representation with almost exclusive reference to county lines and not with reference to the men inhabiting the different sections of the country. Sir, I go for apportionment according to men, as far as it is possible to carry out that proposition.

It is said this would be overshadowing the small counties, to annex them to an adjoining county to constitute a district. Why, sir, suppose Tucker and Randolph, for instance, constituted but one county instead of having a county line drawn between them. Could we say the people of that end of the county were over-

shadowed or rendered inconsequent in the elections for the county? If Tucker should be annexed to Randolph county, would not she have precisely the weight in the county elections and in all other elections which the number of their voters would entitle them to? They would have, in fact, more than this; for we all know that when a small county is annexed to a larger county the small county generally controls all the elections. They control on this principle, that the large county will have a number of rival candidates, whose great object as soon as they are in the field becomes to secure the vote of the small county, and they are willing to submit to any sacrifice of the interests of their own county to secure the support of the adjoining county. It is very true—and it is a very material objection, it strikes me so far as a temporary objection should prevail in reference to this matter, that this provision, so far as it is to have any practical effect on the legislation of the State, as far as possible, puts the Union men of the State in the hands of the Secession districts; puts our destinies in the hands of those who have carried us into the Confederate States.

There is another objection to it, an objection which has had considerable influence with me. It is to subject the people living in the tax-paying districts of the State—that from which much the largest proportion of the revenue of the State is derived, to those people of the other districts. And yet, even with reference to a question of this kind I have put here, so far as it can be done on the basis of white population, the basis of equality of citizens whether they reside here or there. If that will give these districts influence, let them have it. And in the proposition which I favor, we have gone far beyond this. We have been not merely just but we have been most liberal and most magnanimous towards these small counties.

I want to make one explanation in regard to what was said by the gentleman from Lewis in relation to his county. It does happen, unfortunately, that if you adopt the number 54, Lewis county has the largest fraction which is unrepresented. But it is a fraction of less than twenty-one hundred. Now, gentlemen, if you adopt any other number under the sun, there is still some county that is to have the largest fraction unrepresented. Some county must have it. It happened very unfortunately in this case that Lewis was the county; but the fraction which is unrepresented there is only about one-third of that which would entitle Lewis to another delegate. You can adopt no other number that I know of at least with all the trials which I have made that will not leave

a larger fraction unrepresented than the number 54 does. Now, Lewis county has on this principle of apportionment an unrepresented fraction of 2099. Ohio county, while she gets three delegates would have an unrepresented fraction of 5285. Which is the better entitled to the additional delegate, Lewis or Ohio? One has a fractional amount which would give her a delegate; the other an amount about equal to one-third of the ratio. I do regret on account of my friend from Lewis that the difficulty has fallen just there. But take any number you please, some county will have the largest fraction unrepresented. That there can be no doubt about. And you cannot adopt any number, I think, by which you can reduce that fraction lower than about one-third.

I have said, Mr. President, I repeat it, and it is the principle which has governed me throughout this matter, that I am willing to accept any fair principle, fairly applied. When we adopt a principle, let it be applied fairly. You have adopted the principle of equality of citizens. I repudiate the principle of the equality of counties. How are these counties formed? Look at the map of the State. Have these county lines been drawn with any reference to the great interests of the State? Or have they been drawn for the purpose of accommodating some gentleman who had property that wanted a court-house on his farm or along side it. And yet we are to abandon this great principle of equality of citizens, this principle of apportioning representation according to population and resort to the old exploded method exhibited in Virginia ever since 1830, of equality not of citizens but of counties.

I have already occupied a great deal of the time of the Convention in reference to this subject, and I do not want to repeat what I have said before. I submit the matter with these remarks.

MR. HARRISON. The gentleman from Kanawha who has just been called from the house requested that I offer this proposition:

"Resolved that the subject of the house of delegates, in the second section, be postponed to Wednesday next. No proposition then to be considered which shall not be made to-day and printed."

The object of the proposition, as I understand it, is simply to defer this subject that he may have a little time to look over these figures and see how it applies. We cannot vote intelligently without more knowledge than we can get by sitting here and making calculations at the same time. I hope it will be the pleasure of the Convention to adopt that resolution.

MR. DILLE. I desire to know whether this was on account of any absence on the part of the gentleman from Kanawha that he desires the postponement of action.

MR. HARRISON. I suppose, sir, that he just desired it to be laid over on account of his absence. He had prepared it himself and was called out on some other business. I think with a view to the settlement of this question it would be better to adopt a resolution of that kind, which could bring the whole subject, and everything that could be brought forward in reference to it up on Wednesday, requiring every one who has any proposition to submit to bring it before the house to-day.

MR. DERING. If we adopted that resolution, would it prevent any other propositions for the amendment of this question?

MR. STUART of Doddridge. (in the chair) Not unless made to do so.

MR. LAMB. I would move to strike out the latter clause of that. Certainly if the matter should be laid over until Wednesday and we can improve our propositions any, we ought to be at liberty to do so.

MR. PARKER. I would say, this morning the President, Mr. Hall, and the gentleman from Kanawha remarked that they wished it could be laid over until Wednesday for the reason that they have some special engagment which will occupy pretty much to-day, and I presume there is a necessity for their being absent, both the President and Mr. Brown with him.

MR. POMEROY. If it is for that purpose, if any members have business that actually calls for attention, I have no objection; but if it is simply for the purpose of letting various propositions be printed here, why, then, I am opposed to it. From this fact, that we are in the midst of this subject of representation and we have the first report we have ever acted on partially completed. If we move from one report we shall have nothing before us in regard to the time we will get together. Let every gentleman present his proposition now and then let the house have any information for or against; and let another proposition come up and let it either be adopted or voted down; and let us proceed from one thing to another until we get through. There is not much disposition to prolong the session, and I am in favor of going on. Let us have the light now; and if these gentlemen are called away of

course I am willing to extend any courtesy to any member in the house, but I imagine this discussion, from present appearances will go on until these members should be back before any important vote is taken. Why not discuss, if gentlemen wish to, the amendment to increase to 59? I cannot see we would be any better prepared for the discussion of this subject on Wednesday than you are to-day. I cannot see how you would receive any new light on the subject. It is a matter I think we are just as fully prepared to act on to-day as we will ever be.

MR. DERING. I will state that Mr. Brown had to go away on special business.

MR. VAN WINKLE. I would like to ask whether that business is going to take longer than an hour or two? I understand it is a meeting of the stockholders of the Merchants' and Mechanics' Bank.

MR. POMEROY. It is impossible in a body of this kind to have every member on the floor—at least it is impracticable; and we cannot ask the body to cease operations on account of our absence. I have never yet complained of any vote taken when I was absent. If I sustain any loss by it, I think it is a loss I have to sustain; and I think there will be no important vote involving the interests of this State or the United States, or the rest of mankind—be no such vote taken here during this absence. I have no fears of any injustice being done. If it was a matter of courtesy, I would be one of the first to go for it; but I am in favor of going on. I understand several gentlemen who have not been heard wish to speak on this proposition. If we vote down the increase to 59, as I hope we shall, then we will be prepared to vote on some other proposition.

MR. HERVEY. Was there an amendment offered to the proposition of the gentleman from Harrison?

THE PRESIDENT *pro tempore*. (Mr. Stuart) The question is on the amendment of the gentleman from Ohio.

MR. HERVEY. I desire to know what that is.

The Secretary reported the resolution of Mr. Harrison; then the motion of Mr. Lamb, to strike out the latter clause of Mr. Harrison's resolution: "no proposition then to be considered which shall not be made to-day and printed."

MR. HERVEY. I do not know whether that is designed to apply to propositions coming in before the consideration of the whole report or not. If that proposition is designed to apply to amendments upon the whole report when that report comes up to be considered . . .

MR. HARRISON. Of course, it is not for that purpose.

MR. LAMB. This proposition merely applies to the house of delegates, not to the senate.

MR. HERVEY. As I understand the rules, on the adoption of any report motions to strike out and insert are in order. If this proposition is designed to cut out the right of the house to alter the report in any particular after it comes up as a whole, then I would be opposed to it. I have no objections to the postponement.

MR. HARRISON. It is not designed for that purpose, and will not have that effect.

MR. HERVEY. Then I have no objection to the proposition. I am perfectly satisfied, sir, that whether this Convention determined on 54, 56 or 59 . . .

THE PRESIDENT *pro tempore*. The question is now on the amendment of the gentleman from Ohio.

MR. HERVEY. I have no objection to that, with my understanding of it.

MR. HARRISON. The substitute of the gentleman from Brooke is printed and before the house as to the senatorial apportionment. That might probably be considered with equal propriety.

MR. STEVENSON of Wood. I was going to make a remark on the motion itself, but as the amendment is up shall just say that I favor that. I am perfectly willing to postpone the matter long enough to accommodate those members who are absent and no longer than that. If any gentleman knows and can say whether these gentlemen will be necessarily absent until Wednesday, then I shall favor the motion, but, if not, I am in favor of prosecuting the discussion now and finishing up the matter as soon as possible.

MR. LAMB. Our President Hall told me that he is required to attend a meeting of the stockholders of the Merchants' and Mechanics' Bank, he and Mr. Brown of Kanawha. I see no difficulty in that state of the case of these gentlemen being here at half-

past three this afternoon. Certainly they could be here tomorrow. He requested particularly that the vote should not be taken on this subject during his absence; and I hope it will be the pleasure of the Convention to accord that much at least.

MR. HALL of Marion. I do like to be courteous and accommodate everybody, but if we are to turn the steam off here for any gentleman every whip-stitch, we will never get through. We have got something before us; we have to go through it; and we ought to dispose of it at once. We occupy more time in shuffling from one thing to another than we would if we hold on to a thing and did it. Those gentlemen could be spared from the Bank meeting to come here and vote. When we get ready to vote, let us chock the wheels and hold still till they get here and let them vote. I am opposed to passing to anything else. We will save time absolutely by sitting here with our fingers in our mouths until they come back rather than go to anything else.

The amendment proposed is evidently necessary if we are to pass over it, that we should not exclude any proposition that might be made hereafter; because if there is a necessity for time, that very time will lead to new propositions that could not be known and submitted to-day. It is equivalent to asking to continue the matter; we can think of it, but that the result of our thoughts shall not be brought to bear when we are required to act. I hope we will extend every courtesy possible but not leave the subject and that we will send for them when we get ready to vote. I do not know; there is a possibility they may wish to participate in the discussion on this question. But I believe the gentleman from Kanawha has spoken before the body on the principle questions that are involved here and I suppose he is ready simply to vote upon it.

MR. BATTELLE. Mr. President, I am in favor of the amendment; and then, if that obtains, I am in favor of the resolution. I think the Convention ought to extend a courtesy of this kind to two of its members who have virtually asked for it, and I think they can do this without losing any time, perhaps saving time. I differ from some gentlemen who have spoken on this subject in that one point. I believe that sometimes when engaged on a proposition of this sort, or in reference to one department of the Constitution, a long time, that when we have other things pending on which we can enter, we will save time even by letting our minds rest and acting on something about which there will be no difficulty.

So far then as the argument of time is concerned, it is my conviction that we should save rather than lose time. As these gentlemen have asked this delay in this matter, and it is one in which they seem to feel a special interest, I should be in favor of extending to them this courtesy, especially when the Convention can do so at no serious expense to itself.

MR. DILLE. I would have been in favor of this proposition presented to the gentleman from Harrison for the gentleman from Kanawha had it been that he would necessarily have been detained from the business of this Convention until Wednesday. But finding that he and the President of the Convention are only temporarily detained from the business of this Convention, I am decidedly in favor of proceeding at once to the investigation of the subject before us. I am satisfied from what has been said here in this Convention and from conversations with different members of the Convention, and that they are as fully satisfied in reference to the course they intend to pursue in reference to this matter now as they will be hereafter; and I feel inclined to pursue in my action here that course that will the soonest terminate the business of this Convention. It seems to me as though there was a disposition to defer action, a disposition to procrastinate and in fact defer taking hold of propositions which are difficult. We will find difficulty all the time and we may as well take hold of propositions as presented. I am in favor of the amendment of the gentleman from Ohio because it takes part of the proposition away, and I will oppose the original resolution if it is necessary. If the Convention desire to take a vote in the absence of these members, I am willing to extend any courtesy to them and delay the action of the Convention till they can come in and vote with us.

The question was taken on Mr. Lamb's amendment to the motion of Mr. Harrison, and it was agreed to; and the question recurring on Mr. Harrison's resolution, it was rejected.

THE PRESIDENT *pro tempore*. The question recurs on the amendment of the gentleman from Marion and the amendment to it offered by the gentleman from Ohio.

MR. BROWN of Preston. I have heard, sir, of the sovereignty of the United States. Having once acted with the Breckenridge party, I have heard a good deal of state sovereignty. But now for the first time I hear of county sovereignty, and I shall soon be prepared to hear of individual sovereignty. I ask members to re-

flect where this thing is leading us, where we are drifting, what will be the result of this thing. I have listened, sir, to the clamors of the people of my county for the last twenty years in reference to this thing of apportioning representation on white population. They regard it as a fair and equitable principle. They are willing to abide by that principle; and, sir, I am not able to evade or avoid this thing. My constituents are just as capable of making calculations on this subject as any gentleman in this Convention, and they will make their own calculations. They will determine how we have settled this question for them. They desire it to be settled on that great principle for which they have been contending so long. They will not be satisfied, sir, when we give a representative power to one single individual in the county of Tucker equal to that of five men in Preston. It is iniquitous. It is unrighteous and unfair. Let us give fair and equal representation all over the territory within the limits of the new State. Let us apply the rule everywhere; and although the great fundamental principle we have adopted must necessarily be subordinated to the necessity of keeping down the number of our house of delegates, let us act on that principle, carry us whither it may.

I am an advocate of the report of the committee on this subject. I have voted steadily for the maintenance of that report, and shall do so to the end. No other proposition meets my approbation. No other will meet with the approbation of my constituents.

MR. STEVENSON of Wood. I wish, Mr. Chairman, to call the attention of the Convention to Section 5, in the report of the Committee on Fundamental Provisions. It reads thus:

"Every citizen of the State shall be entitled to equal representation in the Government, and in all apportionments of representation equality of numbers of those entitled thereto shall, as far as possible, be preserved."

I wish to say, Mr. President, that I have endeavored, as far as possible at least, to discover the true course that ought to be pursued in reference to this somewhat difficult matter by the Convention; and I am better satisfied now than at any previous time in the history of this discussion that the only safe course for the Convention to pursue in reference to this matter of apportioning representation is to adhere to the principle that is found to be embodied in the report of the committee. If that principle, sir, is a correct one—if it is practicable—then unquestionably it is our duty to adhere to it as far as possible and to travel away from it

only when its application is either very difficult or impossible; but to have it so fixed that in future we can return to that principle again after the difficulty which prevented its application has been removed.

Now, sir, if the principle of basis of representation on population is not the correct one, what other principle is? If you propose to base it on population and upon property, you invade the rights of the people who are thus represented; but if you base it upon population alone, you have certainly adopted a principle that is right in itself; for I suppose no member of the Convention will say that that is not the democratic principle—or, if you please, the republican principle. But, in addition to that, it is a principle which has prevailed in practice and has worked well in the most prosperous states of the Union. And I believe it is the principle recognized and acted on in the apportionment made by the Congress of the United States.

There is another important truth in this same argument, that if you adopt this principle you not only protect the political rights of the people in the different districts but you have adopted the only plan that will successfully protect the interests and property of those people. If you base representation on population or numbers, you know who the representative is, who the delegate is and you know who his constituents are; you know the representatives and the people. If you base it on any other principle that we can only be said to represent property, or to represent local interests, or territory, then the fundamental rights of the citizens are not protected and you have no just rule for your guidance.

Now, I say, sir, that when you propose here to give a distinct representation to every county without respect to population, you have traveled away from the principle which is laid down here, because you do not propose to base representation on numbers or upon population. The representation is based upon something else and that must be the territory without respect to its people or population within the limits of that county or district. Now, if I have read history correctly it is that very principle, or one very much like it, that led to what is known as the famous "rotten borough" system in England, which resulted eventually in rendering the principle of representation a mere farce or a mockery. Now, let me say, the objections which are generally urged against the application of this principle in other states do not apply to this new State of ours. It was said here the other day, and the argument struck me as a good one—and it would be a good one against

this if it applied—that the commercial and manufacturing localities within the new State in consequence of their increase in population would acquire a preponderance in the legislation of the State. Well, I apprehend that does not apply. It is more imagination that reality in regard to our new State. I do not suppose Parkersburg is likely to become a New York or Liverpool very soon. Of course, we expect it to be a place of very considerable note after we have made it the capital of the State. I do not suppose Wheeling is likely to become a Birmingham or Manchester; but suppose these centers do increase in population; suppose that men invest their means and energies in building up particular branches of industry in these localities, why is it not right that these people shall have a representation according to their numbers for the purpose of protecting their interests? Are not these interests just as essential to the welfare of this new State as the other great interest of agriculture? And have the people who have engaged in these particular pursuits of industry not the same right under the Constitution and laws of this State to demand protection for their rights? But let me tell you, sir, that agriculture is the great interest of every state in this country. And, more than that, I believe in every state of this Union it is the most potent interest that is to be found. Even in those states that may be said to be commercial or manufacturing states, even there the agricultural interests is such as to dictate the policy of these states. And I doubt, with all the influence which manufacturing and commercial interests are said to have whether they have any more, even in those states where those interests prevail to the greatest extent, than is necessary for the protection of their particular interests. Now, I apprehend that the farming interests will dictate the policy of this new State for an indefinite number of years to come; and even if it did not, sir, I hold that as there can be neither manufactures nor commerce without agriculture that these great interests of manufacture and commerce will, as a matter of necessity—as a matter of self-preservation—contribute their influence generally to advancing the welfare of the great farming interests of the new State. So that I think if there is anything in that argument that is applicable at all it operates in favor of the principle of representation on the basis of population.

Well, now, Mr. President, as I look upon this question, and upon every other here, as a practical question as well as a question involving principle, I propose here to exhibit in detail some four or five calculations which I have made as to how this thing will

work out. But before doing that let me just allude to the principle of representation that is incorporated in this report. For as I said, if that is the correct principle and can be applied, and can be carried all through, the operations of this principle most unquestionably it is the duty of the Convention to adhere to it. Now, will it do it? The committee propose by a simple rule to discover how many white persons in a certain county will be entitled to a delegate in the lower house. They do not stop there. They propose to give a delegate to every county which has a fraction above half the ratio of population to give a delegate. But that is not all. They do not propose to leave any county entirely without representation, as some members seem to think and as I thought myself at first before I investigated the report in reference to this matter. They propose that the counties that have less than half the ratio shall be attached to some contiguous county and have a delegate jointly with that county until a sufficient population is found within the limits of their own county to entitle them to a separate delegate.

Now, sir, if you increase the number—as I hope the Convention will—to 54, you will have but four counties that will be left without a representative; and just the moment their population has increased to over half the ratio they will be entitled to a representative of their own in the house of delegates. Can you devise any principle that is fairer than this to these counties without doing great injustice to other districts? I am willing to admit it looks fair—it seems equitable on the face of it—to give all these counties a delegate without reference to their population; but when you apply the principle as I have done here and endeavor to show the Convention, you will find it will work very great injustice, if not to a majority at least to a great many of the other districts in the State and that it will be a direct subversion of the very principle which I read here as one of the fundamental principles adopted already by the vote of this Convention. What I see particularly in this principle of basing representation upon the numbers of population is this: That all through this report it keeps steadily in view that principle of representation for numbers; it is never lost sight of; it forms a sort of sliding rule which will adjust itself not only at present but hereafter to almost any variety of circumstances that may exist at anytime in the future. It has that advantage, too, over every other proposition which has been offered here.

Now, Mr. President, I did not wish to detain the Convention with any extended calculations. I have some four or five, and you can apply the same principle which I have used here in working out this question, to any number of the larger counties in the State. But I have more especially made a calculation in reference to one matter that was adverted to by the gentleman from Ohio to my county, and it has not been alluded to before in this Convention this morning. But before coming to that let me call your attention to the fact that Clay, Calhoun, McDowell, Tucker and Webster counties under the operation of the amendment which is now proposed having a population of 8736 will be entitled to five delegates. I forget the number proposed to be given to Mason in the amendment of the gentleman from Marion, but in the report of the committee Mason has one. If one is still retained, then these counties having a population the same as that of Mason, with the exception of twenty or thirty, are to have five times the political power in the legislature that Mason would. And if you should increase the delegation of Mason county even to two, it would give the same population in the counties of Clay, Calhoun, McDowell, Tucker and Webster nearly three times the political power in the house of delegates that it would give to Mason. Now, if that is a fair application of the principle of representing the people in the legislature, I confess it does not appear so to me.

Now, further, here are Calhoun, Clay, Pleasants, McDowell, Tucker, Gilmer, Webster and Nicholas. They will under operation of this amendment if it is adopted, have eight delegates, and yet their combined population is only 19,817. Ohio county, with a population of 22,196—more than that of the eight counties named, will have three or four delegates. So that in any convention or other representative body the same population in those eight counties will have double the political power, double the local power, double the power in every way that it can be voted or applied in the lower house, that Ohio county will have. So you can carry the principle through and apply it to every other county within the limits of the State.

Now, sir, I wish to call attention to this fact: While I am opposed to the principle of representation based on property, yet I favor the principle of representation upon population, because that is the only way that you can protect the property of the people. And I maintain it is one of the highest duties of a convention in making a constitution to see that there is no provision that will oppress the property of the people of the State. Now, I wish to

call your attention to the matter of revenue in these different counties. I will take, for example, Wood—and I get these figures from the Auditor's report. She paid in the year 1860 into the state treasury as taxes $20,684.65. Let me take Tucker for an example on the other side. Tucker county paid in the same year $2,147.18. Wood county has a population of 10,791, nearly eight times the population of Tucker and pays nearly ten times the revenue that Tucker does. And yet you propose to give Tucker almost as much power, or at least half as much, in the laying of these taxes and in the method of expending them, and in making the laws to govern the people who pay them, that you do the people in Wood.

Now, sir, take Kanawha county. She paid the same year the sum of $25,845.92 towards the revenues of the state. Clay, with a population of 1761, paid the same year $1321.80. Kanawha county has over seven times the population of Clay. She pays nearly twenty times as much revenue as Clay. Yet you propose to give Clay half the power in the house of delegates that you give Kanawha. That looks to me very much like taxation without representation.

Another example is Ohio county. Ohio paid in the same year $43,562.75, and Calhoun paid the same year $2,150.60. The population of Ohio is nearly nine times that of Calhoun and pays more than twenty times the amount of revenue that is paid by Calhoun. And yet it is proposed to give Calhoun one-third or one-fourth the power in the legislature you give Ohio.

Well, now, sir, here is another, and the last—Tyler, on which I tried my hand at the figures. Tucker, Clay, Calhoun, Wyoming, Logan, Boone, Raleigh, Wirt, Pleasants, Hancock, Doddridge and Gilmer paid into the state treasury in 1860, $42,865.30. Here are 12 counties with at least 12 delegates, which pay into the treasury not quite as much revenue as one county which has but three or four delegates. Now, of course, I do not design to use that as an argument that property should be specially represented in the legislature; but what I do is this, that if you propose to protect the interests of the people and one of those interests is the right to own, control and manage property, you cannot do it if you allow sparsely settled counties to go into the legislature with such a delegation as shall load down every proposition that may be calculated to protect the interests of these other districts. So that both in regard to the question of population and the taxes that will be paid into the treasury, there seems to be a principle that ought to

prevent the adoption of the amendment proposed by the gentleman from Marion.

MR. HERVEY. Simply a remark or two, sir. As my worthy friend from Preston is determined to adhere as nearly as possible to the democratic principle and consequently supports the report of the Committee, it seems to me, sir, that he would look to that report, he will find, although I have no doubt that that report is as accurate perhaps, or very nearly, as it could be drawn, having the arbitrary number of 46 for a basis—but if he would look even at that report he would find at least one very grave departure from the democratic principle. For instance, here is Pocahontas, with a population of 3686, with one representative according to this report; Wirt, with a population of 3728, one delegate; a fraction of population in the county of Greenbrier of 3381, with no representative. How will the gentleman go home to the people of Tucker and advocate that democratic principle. A glaring departure there, two counties with a less population than this fraction have got a delegate. As I remarked a little while ago, I have no doubt the committee have approximated with this arbitrary number as nearly a correct principle as they could do. But, sir, I would say, I am not particular whether the number is 54, 56 or 59. I was in favor of postponing this question until this proposition, worked out, should have been before the Convention. We have no figures to ascertain which of the lowest numbers would approximate the democratic principle. Now, why, I ask the gentlemen, why they stand committed to the number 46? Have they produced any data here to show why they should be tied to that number? I deny it, Mr. President. The data has not been produced. The question of cost perhaps enters into the minds of members of this Convention. Let us see what we have been doing in that regard under the old constitution. The length of a session by an extension might be 120 days. The cost then would be for each member $480. Per diem under the proposed Constitution $3, 75 days: total cost for each member $225. On the supposition of 45 days, with a probable extension of 30 days, or a reduction of 55 per cent per member. Total cost under the present constitution of a house of 56 members $4 per day $26,880. Under the new Constitution, if we should be so fortunate as to have it adopted a house of 56 members would cost $12,680; difference, as I said before, 55 per cent. Now, it does seem to me that when we reduce the cost 55 per cent or from $26,880 to $12,680 that that argument

is entirely obviated. The question of dollars and cents cannot enter into calculation. And as to democratic principle it is violated in this report in three instances flagrantly. I am therefore in favor of either 54, 56 or 59, whichever number will approximate more nearly to this principle, to which I desire to adhere. And as to the question of influence, I consider that not to be talked about.

MR. STUART of Doddridge. Mr. President, I am opposed to the amendment to the amendment, because the allotment seems to be arbitrary, without any calculation as to result. This thing of investigating figures without particulars or calculations made is very difficult; but I have drawn up what I think the operation of the amendment to the amendment will be. Having 59 members as the number to be allotted, the ratio will be 5150, the fraction 2575. Now, to show you how this will operate and does as an arbitrary allotment without any regard to principle at all, I see it allots to Jackson two members. Well, take from the population of Jackson 5150 leaves an unrepresented population of 390—for which this scheme gives an additional member. Take, for instance from Kanawha her two representatives, leaves a population of 3487 —a greater fraction than would be left from Jackson. Still the delegate is given to Jackson. You see how this thing will work. It operates very unfairly and disregards principle and even interest itself. Now, if we take any amendment here, I want to look at the interest matter; and the amendment of the gentleman from Monongalia will operate very unfairly as it allots to counties delegates that are not even entitled to it under the principle we propose to adopt and excludes others that would be entitled under that principle, so that we are totally unprepared to act on the amendment of the gentleman from Marion unless you have made these calculations and can show how it operates. Now, sir, take the number proposed by the gentleman from Marion, 59, with a ratio of 5150, that ratio will give to Marion three delegates, to Lewis two, to Harrison three, Preston three, Monongalia three, Marshall three, Kanawha three. If you carry out that principle—unless you want to allot arbitrarily, to counties that are not entitled to it under the operation of the amendment of the gentleman from Marion, I will have to oppose the amendment to the amendment at present.

MR. HALL of Marion. I do not desire to detain the Convention, having spoken on the question really involved in this one. Marion county wants nothing but what she is entitled to on fair

rules and principles. She wants all she is entitled to under those rules and principles. It does appear to me, sir, we are drifting in this proposition into mere questions of convenience, and looking to ulterior matters, looking to considerations that should really have no influence upon our action when we make a constitution. Now, sir, we are to do this thing on principle or we are to ignore principle. One of these two things we must do. We are doing injustice to ourselves if we say we have not intelligence enough to know that there is such a thing as principle. We can find that thing and know what it is when we find it. We are either to dispose of this matter on some principle or rule, or we are to ignore all principle or rule and dispose of it arbitrarily. We must take one horn or other of the dilemma. Now, sir, the amendment of my worthy colleague, whatever may have been his view of it, I beg leave to say must upon reflection be shown to be a proposition to ignore every rule and principle and distributing this thing by an arbitrary allotment. I understand the motive of my colleague; a very worthy motive it is, a disposition, a very common feeling, to look to the weak, to aid and protect them. And I participate in that feeling. I would aid the small counties to a certain extent but I would not sacrifice the principle and do injustice to all the other counties in an effort to aid them. The gentleman from Wood county very properly remarked—I believe it was the gentleman from Wood—that he had heard of states' rights—the gentleman from Taylor perhaps it was (Mr. Brown of Preston—Rep)—and he had now heard of county sovereignty: This beats the old nest-egg of Secession itself when you propose to recognize as a principle of representation a mere name—the name of a county; when you admit that it is not the persons or even the property or anything there that can demand your attention, but a name as a basis of representation. Now, let me say we are just in the beginning of our new state operation. Are we to ignore the very foundation and principle we have clamored for year in and year out, and the only proper basis of representation and set that as a precedent for those who will follow us, to say nothing of the injustice we do to the people themselves for the time? Are we to build on that false foundation? I trust not. No, sir, though it should leave Marion without a particle of representation. I would say leave her alone until she is entitled to it. I would not give the child, because I wanted to make a man—a giant—of him—I would not set him to legislating until he was old enough to be entitled to give his vote. I would nurse him and not set him to rule over me.

There is something in this—I referred to it—my colleague referred to it—I referred to the fact that the people would ask us why we had done this thing. And I should be ashamed of my people if after clamoring year in and year out and denouncing eastern Virginia for this principle, if they would quietly sit down and say we will cross off our account against eastern Virginia, inasmuch as we have now done the same thing ourselves. I say I should be ashamed of my people if they would submit to it. I have had the feeling, and I think it is the spirit of the great body of the people who are to compose this new State that we shall have a government founded on the principles of equality and justice and right; and I do not care what hardships it may be necessary for any of them to endure for a time in vindication of these principles, they will bear it like good and noble citizens until they are entitled to come up to the rule and not pervert the rule down to them. I have too high an opinion of the material of which our people are composed to believe that they would prostitute a principle or rule for any temporary convenience.

Well, now, it has been argued again—a thing that I think is a fallacy—and the cry goes out that there are portions of the counties in the proposed new State that have no representation. That argument has been answered by the gentleman from Wood (Mr. Stevenson). I beg gentleman to remember that there is not a particle of truth, in fact, in that idea—that it is an idea, and an empty idea only. I asked when I spoke on this question before, what is the great and impassable barrier in a county line that happens to separate two communities with a common interest that no man who lives on one side of it cannot see the interests of the people who are on the other side of this imaginary line. Why, sir, on the same principle I will ask those people who live in the several districts of my county—and it is made up of three—the eastern, western and the "Forks"—. We often have some scuffling there. One side says we are entitled to the representative, Fairmont says we want the representative to do this thing; the other says, we are going to have the representative. What will they all do? Well, sir, these little questions will arise; I care not if you have no county lines and divide a district, these questions will arise over lines you will draw yourselves within the county. Is any part of Marion not represented? Well, sir, I think not. I do not think they feel it. It is an idea. Where you have a small county, while you may not get the representative living in your county that is not a matter of so much consideration if you get a man who will

represent the interests of your county. They will be able to compel, to coerce, the larger county to look after their interests wherever there is a desire on the part of candidates in the larger county that leads them to ask for votes. Hence they will have the balance of power, and they may choose between two; and if there is no man in the large county that is capable of representing them they will have it in their power to select whom they please. They will vote for that man in whom they have confidence, who will represent their peculiar and local interests. And so in lieu of it being a hardship, the small county will have the power in spite of the large county. But we are told we must give a representative to these smaller counties to build them up and develop them. In the name of conscience, why, what and how? Will the fact that they are permitted to send from within the limits of their own county to serve in the legislature a few days a member who gets three dollars a day, is that going to make that county rich? For what is he going to do? It will not aid them one particle in any respect, if it be true that they are enabled to secure faithful and good representatives within their district. But then it is said again that we must not only pet them up but we must do another thing; and I confess it struck me as rather a sensible argument. The proposition is that because Ohio has been petted by the general and state governments until she has grown to be a giant, therefore we shall give her another representative; and because Joseph has got one striped coat we will give him two; and then because these others have not been petted, and we get them to be giants too, we will have to give them another—and another—and another. And the suggestion is that these other counties which are wholly under the proposed arbitrary rule that is to be substituted for a principle that will leave large fractions unrepresented —they will have just to stand still and buy striped coats for Joseph on the right and Joseph on the left eternally.

The people of Marion do not want any advantage of anybody. She will not ask it; she would not accept it. But she will not see anybody have advantage of her at the sacrifice of any principle.

I hope we will determine on this question; that the gentlemen will vote on this amendment—it will detain the Convention but a moment—that the Convention will determine whether we are to make the white population the basis of representation, or whether we are to forget population and not take the negro in as they used to do in eastern Virginia, not take property either as a basis, but take a name. I hope we will determine that question; and if the

white population is the proper basis, let us say so and stand by it.

Another gentleman says you cannot apply it; that is a good rule but you cannot apply it. Now, I don't believe any such thing. You cannot come up to the thing without a fraction unless, as the gentleman from Kanawha suggests unless you have an order of survey. There is no great hardship in throwing away these fractions until they get big enough to entitle a county to a representative or another. It will operate equally on all, but to ignore the principle—to claim that you cannot avoid these fractions and must therefore discard the rule, would do what? We profess a religion that we look to as the rule of our lives; that every man no matter what he professes, whether he enjoys it or not, he will guard as most worthy, noble and important yet upon this very doctrine, because you cannot live without sin, you are to ignore your religion and throw it away. The argument leads strictly to the same thing. There can be no justice—no uniform and regular justice—there can be no avoiding evils and troubles but by adopting a principle and following that as nearly as you can; and any local or temporary inconvenience for the time is a matter of so much less importance that it should be over-looked, and every good citizen be willing to submit to a temporary inconvenience for the sake of maintaining the rule.

The hour for it having arrived, the Convention took a recess.

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AFTERNOON SESSION

The Convention reassembled, the President in the Chair.

THE PRESIDENT. When the Convention took a recess it had under consideration the amendment of the gentleman from Marion to the amendment of the gentleman from Ohio. The question is on the adoption of the amendment to the amendment.

Several members called "Question."

MR. SOPER. I will say but few words, sir; and I will sustain the amendment with a view of giving every county a delegate. Gentlemen talk here much about the democratic principle of representation according to population. Why, sir, if we should carry out that principle when we are electing a legislature for a state you ought by general edict to distribute around the State as the

people would be pleased to have them, and then, sir, a majority according to democratic principle would prevail and you would get a strictly democratic representation in your house of delegates. But we are met with this difficulty: aside from our state organization, we have got county organizations. They united together make up the state organization. The experience of wisdom on this subject has led us to the true and proper course of having our legislature chosen from counties. Why? Because they are separate organizations. And they are scattered over all portions of the State. Being so, having representatives from the counties, you are sure to get the expression and desire of the people from every part of the State. Now, I am one that stands up for a county organization. I stand in favor of the rights of county organizations; and I say that in the legislature the county ought to be represented. Now, let us, sir, look a little further at the report of your Committee on County Organization. In that report do you make any distinction between a large county and a small one? I apprehend not. All your counties have got the sheriff, the clerk, surveyor and commissioners of revenue. It makes no difference whether the county be small or large, you recognize the principle of a county organization and you give it the same officers. Turn to your report on the Judiciary. Do you make any distinction there between the large and small counties? Do you not propose to give in every county the same number of circuit courts—the small county an equal number with larger county? Usually you do, sir. Why is it? It is because here is a regularly organized county and it has got its rights, and the affairs of the county are to be managed by a certain set of officers the same as you have in all the counties. Well, now, why should you try to make any distinction when you come to the legislature? But say gentlemen that stick up for this report on representation on population, we have got to go down into the counties when we get our delegates and so we cannot carry out the principle fully unless we draw lines through counties. If we adhere to the boundaries of counties there must be some fractional odds. Well, then, we hear from the chairman of the committee of this report saying that he sees and feels the necessity of having small counties represented, and he has stretched the matter as far as he can; he is going to the limit that he can to the violation of this democratic principle of representing according to population, and he has said that he has made his apportionment according to this; and he has given to each county which has a population of one-half the ratio that would entitle it to a

member for that one-half. Well, now, why did not the gentleman extend a little farther and give it to all. If he can violate the principle in one respect, why not for another? The gentleman says if we adopt the figure 54 with a ratio of representation based on that number, there will be but four counties in the State without a representative. You are aware we are now basing this representation on the census of 1860. Those counties must necessarily be led to believe they now contain a much larger population than they did in 1860. They have a right to infer that. The chairman is willing for a house of 54 members. If I understand him he says the ratio then will be five thousand and some hundreds. Then take his view that one-half that number would give a delegate and you get one for two thousand some hundreds. The gentleman will get my idea, and that is all I want to impress. Here we have Tucker with about 1500 inhabitants. It has had the increase of the last two years, and as it has been said here there is a proposition to annex some other county to it. I should not be surprised after this session if that county should contain more than the ratio that would entitle it to a delegate according to the terms of the committee report. But I can ask the question: Where is the great difference between two thousand and some hundred and the proportion of any county as reported here? Is it worth this, whether we should be, day after day, talking without acting? Why not get right down to it and give every county a delegate? Is there not any wrong in that? I think considerable. The gentleman from Wood intimated that representation ought to be according to taxes paid as well as population. I abominate the principle, take care of the rich and let the rich take care of the poor. I do not believe in that doctrine in a republic. And that is it in point of fact. Would these counties if each had a delegate have the effect indicated by the gentleman? No, sir. This mode of representation is applicable to the house of delegates. If you give every county in the State, here will be some ten or twelve additional delegates by distributing according to population, giving to every county that would be entitled to a delegate by having the full number, and if it had not half the number giving the counties the largest fractions delegates. There would be no danger to result to the house according to the terms I now lay down. But look further, and when we come to apportion the senate I am for apportioning that through the whole state according to population as nearly as may be; and if gentlemen are so afraid of the influence of the delegates from the poor counties let them cut lines through counties so as

to be sure and have a delegation in the senate that will be strictly according to population. I go with them if they have these fears; but I apprehend their fears are imaginary. The senate will be, as near as can be, apportioned according to the report. And that senate will always be a check on any hasty or one-sided legislation from the lower house. So that you will find that while we are protecting the weak counties we are not endangering the strong counties, because they have got their strength in the house if it becomes necessary to use it and prevent any danger that may be sought in the legislation of the lower house.

Now, gentlemen, look at this thing fairly, and is there anything wrong in our giving to every county here a delegate? Well, sir, any man that casts his eye over the map of Virginia will see that it is doubtful whether we create any more new counties in this State; every portion of it seems to be divided up into very small counties. I judge, sir, in passing my eye over the map it is cut up in small territory and there is no room for an accumulation of counties. Well, now, sir, our counties are constantly increasing in population. Our numbers of delegates ready fixed cannot be increased, so that every year we grow in age, why we will grow nearer to this equality of representation, taking if you please the basis of the report of the committee. Well, now, sir, gentlemen have said they cannot increase the number beyond 46. And then they look round and say that here are large counties that have smaller numbers comparatively. But they appear to be startled at the idea that, here, look at Pennsylvania, and Ohio and New York, large and powerful states, where the number of the legislature are limited, and here we are starting a state with but little over three hundred thousand inhabitants and we are giving in proportion a larger number of representatives in our legislature. Why, I think if gentlemen will go back to the time those states were first organized as territories and when as young as we will be, they will find there was a larger representation in their delegation; and when we get to be as old as those states you will not hear the complaint that we have got too many members in our legislature. The difference is more one of age than anything else.

Now, again, sir, I submit to the Convention to just take a look at this matter. If we adopt the amendment of 59 I understand that then every county in the State may have a delegate. I understand also that many of those counties with large fractions will have two delegates. That I understand will be the result. Now, sir, with that view I am for going for the amendment; and if I

cannot get anything else I will be satisfied with the number 56. And I hope the convention will so dispose of this matter as to give every county a delegate. And I think from the few words that I have dropped out here that in doing so we will do exact justice to all portions of the State without placing one portion of the State within the control of any other; that in the two houses we have got that balance, that control in all matters of legislation that will take care of all the interests of the State. I am, therefore, sir, in favor of the amendment.

MR. STUART of Doddridge. I do not rise for the purpose of making a speech, sir. I have no taste for repetition. If the members of this Convention will only reflect that before an intelligent body repeating an argument over and over again does not advance the interest of the cause at all, we will get along much better. I have nothing to add here, but simply to say to the gentleman from Tyler that if he desires to give to the small counties a delegate the very amendment he proposes to support now will have the effect of excluding those counties, because it is not necessary to support this amendment in order to give a representative to these counties. I shall vote against this amendment, not because I am not willing to vote that the small counties shall have a representative but because it is so unfair I am not willing to support anything of this character in order to carry out my views in relation to small counties. I am inclined to think the gentleman will support almost any proposition to give the small counties a delegate. This has such unfairness on its face that I cannot support it; such arbitrary rules connected with it. It allots to certain counties two delegates, which under the ratio takes it from larger counties entitled to it. Consequently it is unfair—perfectly unfair, as I remarked before to-day. I would say to gentlemen on the floor who desire to give to small counties one delegate, you render it impossible by voting for this amendment; because if it is adopted the motion of the gentleman from Ohio is amended by this amendment in such a way that a majority of this body will be compelled to vote against it. I would suggest to vote down the amendment and then you can offer another amendment to that of the gentleman from Ohio that will embrace the object you desire.

THE PRESIDENT. The Chair would suggest to the gentlemen from Doddridge to have the amendment to the amendment reported. The Chair is under the impression he is mistaken, that the amendment provides the names of the counties.

MR. STUART of Doddridge. Yes, I understand it perfectly. It makes the number of the house 59; allots to the various counties the numbers they ought to be entitled to. For illustration, it allots to Jackson two delegates, when under same ratio Kanawha would be more entitled to three than Jackson to two. The same way with many other counties. This amendment is unfair in every feature. It carries unfairness on every principle by which you judge it. The principle of allotting members to each county has some fairness to it but the amendment of the gentleman from Marion is unfair in every respect; for it is arbitrary in its allotment and assigns delegates where they ought not to be.

MR. HERVEY. I would state, Mr. President, that I was not in when the amendment was offered.

THE PRESIDENT. Will the Secretary report it.

The Secretary reported Mr. Haymond's motion as follows:

Substitute the following:

"RESOLVED, That the house of delegates shall consist of fifty-nine members, to be divided among the counties as follows:

Ohio county four delegates; Marshall, Marion, Monongalia, Preston, Harrison, Wood, Jackson, Barbour, Mason, Kanawha, Greenbrier and Monroe counties, two delegates each; and Hancock, Brooke, Wetzel, Taylor, Ritchie, Doddridge, Wirt, Roane, Calhoun, Gilmer, Tucker, Pleasants, Tyler, Lewis, Braxton, Upshur, Randolph, Putnam, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette and Raleigh, one delegate each."

MR. HAYMOND. Mr. President. In offering this resolution this morning, my object was to secure to each county in the State of West Virginia one member of the house of delegates, and nothing else. If it can be done, as some of my friends seem to think, with 54 or 56, I would prefer it; but I think it cannot be done. If this plan is defeated, the whole will be defeated.

Mr. President, I am from the county of Marion—a large county. I do not come here to form a constitution for the county of Marion but to help form a constitution for the State of West Virginia; and I am for forming such a constitution as will be an advantage to the whole State and not to the large counties alone. If you give the large counties the lead, they will always keep it. I desire to see a constitution formed for the new State of West

Virginia on liberal terms that will cause it to grow up and be a powerful state. Sir, we cannot make a great state of this unless we improve it. It must be improved beyond your cities or large and populous counties. You must bring up the county of Tucker, which some men appear to think should be out of existence. Sirs, I recollect—which was but a few years ago—when the great county of Preston only gave 400 votes. She now can give 2500 votes.

Mr. President, I, this morning was surprised at my esteemed and faithful friend from Preston, who told us this was not a democratic measure, and that he had been a Breckenridge democrat, and he could not go for this measure. Sirs, I regret it very much. I want to hear no voice here that a man is a Democrat or a Whig; I want to hear no voice say he is a Republican or Democrat or Whig. I want there to be but one voice in this country, and that is my country and my country's cause. That is my voice, and that is where I intend to die and no other place.

MR. BROWN of Preston. I call for the yeas and nays on this question.

The yeas and nays were ordered and taken with result as follows:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Hansley, Haymond, McCutchen, Stephenson of Clay, Soper, Taylor, Walker—9.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Battelle, Chapman, Carskadon, Dering, Dille, Hall of Marion, Harrison, Hubbs, Hervey, Irvine, Lamb, Lauck, Montague, Mahon, Parsons, Powell, Parker, Paxton, Pomeroy, Robinson, Ruffner, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Stuart of Doddridge, Trainer, Van Winkle, Warder, Wilson—33.

So the amendment to the amendment was rejected.

MR. STUART of Doddridge. I offer the following amendment to the amendment—simply the one which was offered before, to insert after the word "members," in the 7th line the words: "and to be so distributed as to give to each county at least one delegate."

MR. HALL of Marion. I ask for the yeas and nays.

MR. STUART of Doddridge. I would simply ask if calling the ayes and noes prevents a statement of the reasons for the amend-

ment. I do not intend to make an argument. I expect the gentleman will oppose the amendment.

MR. HALL of Marion. If it does, I am willing to withdraw the call if it is in my power.

THE PRESIDENT. The gentleman can proceed by general consent.

MR. STUART of Doddridge. Simply an explanation. In making 54, which was the amendment offered by the gentleman from Ohio, I believe the ratio is 5637, giving a fraction of 3092 (?). Now, if we go on and apportion according to this ratio without the amendment as offered by myself it would give to Barbour an additional delegate and to the county of Greenbrier an additional delegate, Monroe, with a fraction of 3889, an additional delegate, Pleasants, with 2926 a delegate; Raleigh a delegate, Mason with a fraction of 3115 a delegate, and Ohio, with a fraction of 5285, a delegate. Wyoming is the next largest fraction, 2797. Well, now, sir, it has been argued here that this is an arbitrary measure giving to these small counties a delegate and that it will act oppressively against the larger counties. Let us look at it. I call atttention to one fact that has not been observed. Taking the amendment of the gentleman from Ohio it gives to Mason for a fraction 3115 an additional delegate. Taking Calhoun and Gilmer together, they have a population of 6177. A delegate to Mason for a fraction of 3115 and a delegate each to Calhoun and Gilmer for a population of 6177 is giving equal representation. A fraction of 2926 in Pleasants has a representative, while Clay and Braxton have but one with a population of 6646—almost three times the population of Pleasants. I mention this merely to show you that the amendment of the gentleman from Ohio acts oppressively and arbitrarily on the small counties. If we lean towards any of them let us lean towards the smaller counties. If a fraction of 2926 is to have a delegate, my amendment simply proposes to divide the fractions of two counties, which is 6167 and give each county a delegate. It does appear to me the amendment I have proposed will not operate as the gentleman from Wood and the gentleman from Ohio have represented it. The amendment of the gentleman from Ohio gives to these large counties for a small fraction a delegate, while the districts, like the county of Gilmer and Calhoun—for there is six or seven of them—have some three times the number in their counties that entitles these large counties by their fractions to a delegate. And

I see no impropriety in the world in giving one to the small counties. The number gives to the small counties every one a delegate and leaves to Wood two delegates and the others as distributed by the report of the committee. I am in favor of the amendment to the amendment.

MR. LAMB. The objection of the gentleman from Doddridge is exclusively to the 5th section of this report. It is not properly an amendment to the amendment which I offered; but the question which his amendment raises will distinctly come up on the consideration of the 5th section. That section provides:

"5. For the election of delegates, every county containing a white population of less than one-half the ratio of representation for the house of delegates, shall, at each apportionment, be attached to some contiguous county or counties, to form a delegate district."

If we have a county such as McDowell with a white population of 1535, we must attach it to some larger county. Then comes in the argument that a larger county ought to have a delegate by itself and you must detach the smaller. Now, Calhoun and Gilmer are put here together to make a delegate district. If we adopt the number 54 and the ratio of representation is 5637, the population of Calhoun and Gilmer entitle that district and leave an excess of 540. This is the subject of complaint. Take the two counties which lie adjacent; which perhaps form a more natural district than Calhoun does a separate county by itself—a district homogeneous in its interests—and they are fully represented except this fraction of 540. Is there any very particular hardship here? The other case which he mentioned, that of Clay and Braxton, I ought perhaps to mention here in this connection that it is represented by the member from Clay and also the member from Nicholas that a better arrangement of this delegate district would be to attach Clay and Nicholas together, and Braxton and Webster, instead of Webster and Nicholas and Clay and Braxton. They all lie in a square and can very naturally be arranged in either way. Attach, then, Clay and Nicholas, and we have a delegate district of 6280, and that population is fully represented according to the population of the State, regarding the ratio, with the exception of 599. If you adopt this principle at all you can certainly apply it in no other manner; and the two excesses here amounting to a little over a thousand are compensated over and over again in apportioning representation to the other small counties. The working out of this proposition of 54 and apportioning it among the different coun-

ties according to the rule embodied in the 5th and 6th sections of this project, leads to something like this result on the whole; not to call attention to any extreme cases.

The small counties, with a population of 47,777, will have eleven representatives in the house of delegates—which is one for every 4343 of their population. Taking the matter as a whole, the other counties with a population of 256,656 will have one representative for every 5833. For every representative that is given to a large county she loses nearly 1500 as a bonus to these smaller counties. Now, gentlemen, if we have done anything amiss in this matter it is in sacrificing too much of our principle for the purpose of being liberal, magnanimous, towards the small counties. It is not, as was argued by the gentleman from Tyler, a question whether these small counties shall be represented or not. They are to be represented anyhow. Why this county of Tucker, with 1396 inhabitants, has always voted with Randolph. She has never been separately represented. This county of Webster, with 1512, has always voted with the counties from which she was formed, a part of her votes with Nicholas and part with Braxton and part with Randolph. The county of Clay also votes with the county from which it was taken. The county of McDowell, which is one of these counties, has hitherto voted with Tazewell. Tazewell, unfortunately, is not in our State at present; but the county of McDowell is now placed alongside another county of much smaller population; will have much greater influence, therefore, in the election of a delegate. Such having been the practice heretofore, have we heard any loud complaints from these counties in reference to this measure heretofore? They are represented if they give their full vote in favor of any candidate that was before their people in the district; and that full vote has its full weight in determining who shall represent that district. Does the fact of a mere imaginary county line separate their interest from the residue of the district? Are they not as fully and fairly represented in voting in this manner as one portion of the county of Ohio is represented when the whole county votes for its delegates? Is there not just the same claim for the people on Short Creek to say that they are not represented at all in the legislature because they are not entitled to choose a delegate separately from Ohio? As there is for these counties when they are joined in districts to which they naturally belong, with which the connection is a natural one, and when they have their full weight in electing the representatives of that district?

I am occupying much more of the time of the Convention on this subject than I ought, but I trust the Convention will allow me to make an explanation or two in regard to the number 54, if it is to be distributed according to the principles embodied in the report of the Committee on the Legislative Department.

In the first place, then, comparing the number 46 with 54 you find that the number 46 leaves unrepresented fractions of 3881, 2908, 2542, 2134, 2111; and all these fractions that are left unrepresented upon the 46 number exceed the very highest fraction unrepresented upon the 54 number. The very highest fraction which is unrepresented on the 54 number unfortunately falls on Lewis county and amounts to 2099. The county of Greenbrier and the county of Pocahontas have been taken in by this Convention without asking the consent of the people of those counties. Greenbrier has a population of 10,499; Pocahontas, which is adjoining, 3686. And yet they are both to be represented in your legislature on the 46 number with exactly the same number, one delegate each. Now, when we come with our Constitution to the people of Greenbrier and Pocahontas both, I want them to be satisfied that that Constitution is based on fair republican principles. You have taken them into the new State without their consent. You have given a delegate to Pocahontas for 3600 inhabitants; to Greenbrier with three times as many you have given only one delegate. What idea will they form of your Constitution, the principle on which it has been based? I will say nothing in regard to the particular case of my friend from Wood. He has spoken on this subject himself, and he is able to speak for himself; but it will relieve the case there of all difficulty at once. Wood would get two, Pleasants would be separated, having more than half the ratio, 5637, and 2818 half. Pleasants would have over 2900. She would be entitled to a delegate herself on the principles embodied in the report of the Committee on the Legislative Department. Pleasants would get one and Wood would get two. That would satisfy both these districts.

It has been contended the census has not done Mason justice. The census gives her 8752 inhabitants. The gentleman from Kanawha (Mr. Brown) and the gentleman from Mason also I understand insist that the census is wrong; that Mason really has a population of over twelve thousand. If you adopt the ratio of 54 you get rid of this difficulty. Mason would be entitled to two delegates whether she has 8752 as put down in the census of 1860 or 12,000 as claimed.

Now, let us look at the operation of these numbers on the other side of the mountains. Suppose, Pendleton, Hardy, Hampshire and the others vote themselves in and you come to apportion representatives there. You have Berkeley, with a population of 10,606; and upon the 46 number you can give her but one representative. You give to Greenbrier with 10,499 but one, and you can give to Berkeley but one. Jefferson has a population of 10,092, and you can give her but one. Then right alongside these counties is Morgan with a population of 3613. You must give her a representative too. You go to those counties and present your Constitution and ask themselves to vote themselves in. Will they not be very apt to ask you what sort of a basis of representation is this you are giving to us? Here are two counties alongside of Morgan having over ten thousand inhabitants each . . .

MR. STUART of Doddridge. I do not desire that there should be an impression got up here—that is a mistake. On the basis of 46 the ratio is 6618 a fraction over 3300. It would give to Berkeley and Jefferson two representatives. You are mistaken. Although I have been governed by your figures, in that matter you are mistaken.

MR. LAMB. You are to apply this in the same manner to the counties on the other side of the mountains that you do on this. On this side it does not admit any county to have two delegates unless its population is over twelve thousand.

MR. STUART of Doddridge. The gentleman is mistaken again. It gives to Wood county two. That has but ten thousand and something.

MR. LAMB. No, sir. Fifty-four would give Wood two; 46 gives it but one.

MR. STUART of Doddridge. I am not mistaken. Fifty-four does give two; but you put Pleasants on it.

MR. LAMB. It gives to Wood and Pleasants jointly two, because the joint population exceeds twelve thousand. The gentleman complimented me the other day on my skill in figures. Now I must insist upon presuming a little on that now. He will find it impossible to work out the 46 and give Wood county two on the principles designated in this report. We may as well speak of this matter as it is. The number 46 was adopted in the committee. Forty-two was proposed, and the committee generally preferred it;

but 46 was adopted because it allowed the giving of two delegates to Monongalia and Marshall and to the county of Marion. It is just the number, applied on this side of the mountains, which will give Marion two delegates; but it will give no county with a less population than over twelve thousand two delegates any way you can work it out, on this side of the mountains; and it must be applied, of course, in the same way on the other.

Now, Jefferson, with 10,092 inhabitants cannot have two representatives; and Greenbrier, with 10,499 but one.

I have said in reference to this matter that the simple reason for my supporting 54 instead of 46 is that it is carrying out these principles more fairly; it is a nearer approximation, at least, to the principle of apportioning according to white population. As a mere question of interest, gentleman, I know that the interests of Ohio county would be with the number 46; but I am not going to enter into this matter as a mere squabble for interest. I am willing to consent to any fair principle which shall be fairly applied; but I want this matter regulated on principle. This Constitution, I hope, if it shall be accepted by the people, will govern this State for many a long year. I want to put down plain and definite rules in the Constitution upon which representation may be hereafter apportioned; and rules that will produce such a result that we can say that this, even as an arithmetical question, does approach as nearly as possible the principle of apportioning representation according to white population. Nor does it weaken my attachment to that principle of apportioning according to white population that we cannot carry out that principle exactly in this apportionment. Still, I think it is of the utmost importance that we should so arrange our rules and adhere to them when we have adopted them as at least to approximate it as near as we can.

I must say that I object entirely to the argument of the gentleman from Tyler. Carry that argument to its fair conclusions and it leads to this, that we ought to strike out a fundamental rule and apportion representation, not according to population, but according to county lines. He referred you to the judiciary that you had to regulate according to county lines. He referred you to the report of the Committee on Township Organization, that this is regulated by county lines; and his inference, therefore, was that representation in the legislature will have to be regulated by county lines too. That is an idea that I am utterly opposed to. Where it is impossible to ignore entirely the fact of these county lines, I submit to the necessity of it; but I want wherever it is possible to

do so to adhere as far as we do to the principle of apportioning representation according to population. I am as anxious as any man that the new State should get into operation. In the Convention, in August last, when I said that I felt as sensibly as any man could do the injury we had sustained from eastern Virginia, that I felt as anxious as any one could do to dissolve the connection with the eastern portion of the State, I meant what I said, though I did urge that this was not the proper time for agitating the matter and that as we were now no longer subjected to the control and domination of eastern Virginia we could afford to wait until we could see a little further into the future before we tried to push this question, to agitate and divide us. But when I entered into the compromise committee I gave up there this question of time, and since that I have come here with the determination, so far as I could effect it, not merely to carry out the plan of the new State fairly but to expedite it if I could. But I want, gentlemen, when you send me a constitution to lay before my people, I want to be able to say that it is based on such principles as they ought to adopt. If you depart from these principles, above all if you base representation not upon population but upon county lines, I tell you it requires no prophet to see what will be the vote of each county when your Constitution is submitted for their ratification or rejection.

MR. BROWN of Kanawha. Mr. President, if the indication from the gentleman from Ohio be correct, I am afraid that Ohio county will vote against the proposed Constitution any way that it is proposed to settle it; because I am satisfied the plan before us does not carry out the very principle of the report. It is a mere approximate to it and a very defective one at that. I feel, sir, somewhat in doubt as to how to vote on this question as now presented to the house, and for the reason that it is a new proposition that I have not figured on again. Before dinner, we were discussing the proposition, and at dinner we had occasion to test it by carrying it out. The motion of the gentleman from Marion, I believe gave so many delegates specifically, one to each county, and then so many others, designating them but to see how far it carried out the principle was a matter for calculation afterwards. I looked over that and unfortunately came in while the vote was being cast. Upon that point I was content to vote in the affirmative, as I did. But if I cannot get that, then the next best proposition that is before my mind is that submitted by the gentleman from Ohio, as I understand it. The introduction now by the gentle-

man from Doddridge of a third proposition, intermediate, is one which may perhaps defeat one of the ends I had in view. It attains one of the ends proposed but will defeat another; and I am not able to say without running that through to see how far it applies or more definitely than that of the gentleman from Ohio or the one we have voted down. I confess the large vote very decidedly given on the last proposition rather settles in my mind the determination of the house in regard to the question raised by the gentleman from Doddridge. The one thing that moves me to insist on a larger house was the fact which struck me as a manifest injustice to Greenbrier and Monroe that have no representatives here, and for us in their absence, having taken them in without their consent to fix a house of representatives and leave them with the largest fractions unrepresented of any counties in the State. This did look a little like taking advantage behind their backs, and I would rather give them a benefit over and above any of the others than take advantage of them in their absence. Now, by the adoption of the 59 proposition each of these counties was to secure an additional delegate and therefore I was content to vote for it. The proposition of the gentleman from Ohio, as I understand it, a 54 house apportioned on the plan of this report will accomplish I believe the same end if I am not mistaken, but the amendment of the gentleman from Doddridge will not accomplish that end.

MR. LAMB. Upon the 54 plan worked out on that system, Monroe would get one delegate for the first 6618 inhabitants, white population; she would then have one delegate for a fraction of 3839; so that she is favored so far as that is concerned. So it will be with Greenbrier. She gets one delegate for the first 6618, and one delegate for a fraction of 4862.

MR. BROWN of Kanawha. That was my understanding of your proposition. Now, how these delegates will fall in the proposition of the gentleman from Doddridge I am not prepared to say; but it occurs to me by that these counties will be cut off and will get but one delegate.

MR. LAMB. Yes, sir.

MR. BROWN of Kanawha. And we are actually increasing the inequality instead of diminishing it if that were so. Well, I should feel very averse while seeking justice to others to actually increase the wrong to these. I infinitely prefer the proposition of the gentleman from Ohio to that of the gentleman from Doddridge. It

does attain the end I had in view in both cases. But this will defeat a very important one, one for which there is no one to answer for. I, therefore, between the two propositions, prefer that of the gentleman from Ohio.

MR. HERVEY. If I understand the proposition of the gentleman from Doddridge it proposes to give each small county one delegate. The proposition of the gentleman from Ohio makes the number of delegates 54. It then leaves unrepresented, if I have got the right calculation, the counties of Clay, McDowell, Tucker, Webster. I believe that is correct. It gives Pleasants a delegate for 2923 population. I would suggest to the gentleman from Doddridge whether or not all interest could not be accommodated by adopting the number 58. That would carry out the calculation of the gentleman from Ohio so far as he has gone, and also the calculation of the gentleman from Doddridge, to give each of the counties a delegate. Consequently, I think the gentleman from Kanawha is mistaken when he says that the proposition of the gentleman from Marion would accomplish it. I think it would be one more than would accomplish that purpose. If the amendment of the gentleman from Doddridge fails, I shall certainly support the proposition of the gentleman from Ohio. I would like to accomodate all sides here as nearly as possible, and consequently I want to be guided by the best lights we can gather on this subject; accommodate all the different interests as near as possible, and if that will meet the views of the gentleman from Doddridge, and if it will meet the views of the gentleman from Ohio to increase the number four, I certainly would have no objections so far as my own county is concerned. It is no difference at all. It would not change our district one iota. I would desire, however, that every interest be accommodated as near as possible. I think the number 59 does not reach the case, as the gentleman supposed.

THE PRESIDENT *pro tempore*. (Mr. Hall of Marion in the chair.) The question is on the adoption of the amendment to the amendment.

MR. STUART of Doddridge. I will support the amendment to the amendment. If the amendment to the amendment is voted down I will support the amendment. But I like the amendment to the amendment better than the amendment, and for that reason I am going to support it. It is the very proposition that I had up on Saturday; and I find the gentleman from Kanawha has for-

saken the proposition, and it needs perhaps that I should still explain it. The gentleman from Ohio, who has figured so much over this matter and who has been training me so long that I think before I leave Wheeling I will be able to square the circle—he has got me into the habit of making figures, and I think a good many members have not made the calculations and seen how the thing will apply. If they would work at it so hard as the gentleman from Ohio and I they would understand it thoroughly.

The gentleman from Ohio supports his amendment because the fractions are not so large. To carry out that principle you should make it at least 100 or 150 members. The more you increase the number of the house, the less the fractions will be. I do not care how you do, and just in proportion as you increase the number of members in that proportion will the fractions be reduced. That is true. Then if you want small fractions increase your number, from 50 to 100, just as you see proper and the higher you get the less the fraction will be. But take the report of the committee, as it has been reported here and it will not operate any more unfairly than to take 54. Not a particle, because the fractions will be just in proportion to the number of delegates you may say there shall be. But my amendment, in giving to these counties a certain number of delegates, according to the amendment of the gentleman from Ohio, it gives on an arbitrary rule to the county of Monroe for a fraction of 3889 an additional delegate.

That is arbitrary. Well, sir, if we are to adopt arbitrary rules here assigning delegates, I say that fraction of three thousand in Monroe is no more entitled to that delegate than Calhoun and Gilmer with a population of 6177. It seems to me the gentleman fails to answer that argument. Clay and Braxton have a population of 6646. Now, if we were to assign arbitrarily delegates to these counties, why not give it to these instead of giving it to Monroe for her three thousand? My amendment proposes to remedy these fractions, while the amendment of the gentleman from Ohio does not remedy it at all, but leaves the fractions to operate oppressively against these small counties whom you have placed into districts. You give to one fraction, according to his amendment, in a large county a delegate, while you still leave two or three counties collected together with a population from six to seven thousand without a delegate, and my amendment proposes to assign it to that people. If I go arbitrarily and assign delegates I want to lean, if possible, towards the smaller counties and not to the largest ones. Now, if we adopt an arbitrary rule, let us

give it to the larger fractions; and I must say that those delegate districts have larger fractions than Monroe and many other counties that you give it to.

MR. LAMB. Will the gentleman excuse me. The delegate district composed of Calhoun and Gilmer has a fraction of 540. Monroe has a fraction of 3889. Correcting the new district, as has been suggested, and putting Clay and Nicholas together, there is a fraction there of 591 against 3889.

MR. STUART of Doddridge. Well, I admit the gentleman can teach me something yet in figures. I know it, although he has trained me pretty well. The fraction for which a delegate is given in Barbour is three thousand. Well, I will be exact. The fraction for which you assigned a delegate to Barbour is 3092. That is right?

MR. LAMB. Yes, sir.

MR. STUART of Doddridge. Well, sir, now for this fraction you give a delegate. Now, take the delegate districts of Clay and Braxton, which is 6646—more than double the amount of the fraction of Barbour, to whom you assign one delegate. Now, sir, where is the greatest justice? Assigning it to these two or giving it to Barbour? Can you not understand the proposition that the amendment of the gentleman from Ohio proposes to assign to Braxton one delegate for a fraction of 3092, while my amendment proposes to give to Clay and Braxton, who has a population of double the amount of that fraction one each. Then if you were to adopt an arbitrary rule here, let us give it to these counties which have a greater fraction taking into consideration the number for which you assign a delegate to Barbour.

Now, sir, the argument of the gentleman in regard to the counties over the mountains—Berkeley and Jefferson—we have not assigned delegates there yet. We have not allotted the number they shall have; but there is a population of 10,600 and something in the one and ten thousand and something in the other. Take the ratio of 6618 they have a delegate and then a fraction greater than a few. When we come to apportion delegates to that district, I would be willing to give them, as we almost invariably have given here, a delegate for a fraction exceeding half the number of the ratio. That need be no argument here to bear against my amendment. Because when we come to assign the number of delegates there, we can do that thing because it has been done in almost

every instance here except one or two; and that was carrying out the argument of the gentleman from Lewis that the gentleman's principle is a matter of accident sometimes. It will not work exactly right. But I am not going to appeal to that. I only want it understood that my reason for the amendment I have proposed is that if we assign delegates arbitrarily we shall give them to the smaller counties. I want you to understand again that adopting 54 with my amendment gives these smaller counties a delegate to every one, and leaves one to dispose of—assigns to Wood two; and there will be a fight between Ohio and Greenbrier for the other. I believe the members understand the amendment and the amendment to the amendment.

MR. BROWN of Kanawha. I would suggest an amendment for the gentleman's acceptance. I think perhaps it would avoid a difficulty as suggested by the gentleman from Brooke, that take the number 58 it will accommodate this question, it will give a delegate to each county and it will give a sufficient number to be apportioned on the plan that is reported by the committee on the rule already laid down, and give to these other counties by their fractions the delegates they desire. Less than 58 would not do it. Fifty-nine I think does it better, as proposed by the gentleman from Marion, I am satisfied.

THE PRESIDENT. It would not be in order to argue on the suggestion unless the amendment is accepted.

MR. STUART of Doddridge. I cannot accept it, sir, at present.

MR. BROWN of Kanawha. Then, sir, I beg leave to say, in reply to the gentleman that while he and I have parted company, I only regret that the gentleman parted company with me on the motion that was voted down the object of which was to attain the very thing he now proposes. If I could see—I have not had the opportunity this gentleman has—to see how this rule applies so as to accomplish what he claims for it, I should not hesitate; but I apprehend it will not. At the very first glance over it, it struck me Greenbrier and Monroe would get an additional delegate and it would really be increasing the number of delegates among the other counties. One of the grounds of our objections was that there was such injustice with even 46 that we ought to add one delegate for each of these counties; and one gentleman proposed that, and one to Wood, and stopped. Even that would accommodate one of the objections that the gentleman's amendment does not

attain at all. I hope we will yet get a house that will give each county a delegate and still attain to full representation to these counties without a fraction that is so glaringly large.

THE PRESIDENT *pro tempore*. The question is on the amendment to the amendment, and on this the yeas and nays have been demanded. Is the Convention ready for the question?

The vote was taken and resulted:

YEAS—Messrs. John Hall (President), Brumfield, Dering, Dolly, Hansley, Haymond, Harrison, Hubbs, Hervey, Lauck, Montague, McCutchen, Parsons, Parker, Robinson, Simmons, Stephenson of Clay, Sheets, Soper, Stuart of Doddridge, Taylor, Walker, Warder, Wilson—24.

NAYS—Messrs. Brown of Preston, Brown of Kanawha, Brooks, Battelle, Chapman, Carskadon, Dille, Hall of Marion, Irvine, Lamb, Mahon, Powell, Paxton, Pomeroy, Ruffner, Sinsel, Stevenson of Wood, Stewart of Wirt, Trainer, Van Winkle—20.

So the amendment to the amendment was adopted, and the question recurred on the amendment.

The President resumed the chair.

MR. BROWN of Kanawha. I believe the section is not amendable?

THE PRESIDENT. The question is on the adoption of the amendment as amended, to strike out 46 and insert 54, with the addition made on the motion of the gentleman from Doddridge.

MR. BROWN of Kanawha. I desire to inquire whether it would be in order now to strike out 54 and insert 58?

MR. VAN WINKLE. It is certainly in order.

THE PRESIDENT. The question will be then on the separate amendment to strike out 54 and substitute 58.

MR. BROWN of Kanawha. Very well, sir.

MR. SINSEL. I do not understand that the house had decided by this vote that it would give each county a delegate unless they adopt 54.

MR. LAMB. Vote down 54 and then it will stand as reported by the committee.

MR. VAN WINKLE. Certainly; but while the amendment of the gentleman from Ohio is open for separate amendment, that is to say, one at a time. The gentleman from Doddridge proposed an amendment in addition to the section. This was carried. The gentleman from Kanawha now proposes another and different amendment. That is certainly in order. He proposes to substitute 58 for 54 in the amendment of the gentleman from Ohio.

THE PRESIDENT. The Chair has no doubt about it.

MR. HERVEY. I hope this house will so understand this proposition that there may be no difficulty at all in voting. I desire, sir, to carry out the programme of the gentleman from Ohio County up to the number 54; that that shall be the apportionment, and then add to that the number four, which will supply those counties.

MR. VAN WINKLE. That is substantially the amendment of the gentleman from Kanawha.

THE PRESIDENT. That is the substance of the amendment to the amendment.

MR. HERVEY. If my impression is correct the gentleman from Kanawha will furnish a different basis for calculation. Now, sir, I desire to carry out, so far as the gentleman from Ohio county has done the number 54; and that they shall be distributed as the gentleman from Ohio county has distributed them except that the four counties not provided for by the report shall be apportioned to the other four.

MR. BROWN of Kanawha. What four counties does the gentleman allude to?

MR. HERVEY. The four not provided for in the proposition of the gentleman from Ohio are Clay, McDowell, Tucker and Calhoun.

MR. STUART of Doddridge. I would say to the gentleman they are provided for by the amendment that has already been adopted.

MR. HERVEY. The house has decided that these counties shall have a delegate; and, consequently, if I understand the proposition, it will make 58. What I desire is that the programme of the gentleman from Ohio shall be carried out, and that the four additional members shall be given to these small counties that I have named.

THE PRESIDENT. The Chair would remark to the gentleman that the small counties are all provided for by the action just taken;

but that the four proposed to be added, if the Chair understands the motion, is to be added to four counties that have already a representation—that have to be increased that much.

MR. VAN WINKLE. With 58 number, every county will have one at least.

I would suggest to the gentleman from Kanawha that it will require five additional ones.

MR. BROWN of Kanawha. I will take the 59, for I rather thought so myself. I take it the gentleman from Brooke thought that 58 would accommodate the case.

Several members explained to Mr. Brown that the number 58 accomplished what was desired.

MR. BROWN of Kanawha. Then I will stand on 58, and I think that will work it out. I think now the house have given an expression that I hope it will stand by of fixing a delegate for each county. Now, one of the grounds of objection to this report and to the house as adopted last week, and to the number 56, and one of the grounds that seemed to impress every gentleman's mind who has spoken in this house, was the manifest injustice to Greenbrier and Monroe on the rule prescribed with a house of 46. Now I think we have determined to give each county a member and to increase the house. I think it will be ascertained incontrovertibly that upon a house of 54 it will make that injustice and distinction more glaring and apparent than now in those two counties; that it will appropriate to the counties that are represented here all the delegates and will add nothing but the rule to the counties of Greenbrier and Monroe. Therefore, it necessitates the fact that we must increase the house to avoid that difficulty, and then they having the largest fractions to come in for the full delegates. This is the only way I can possibly see you can attain it, unless, as the gentleman from Brooke proposes, you just give them so much. Then you are departing from the rule again; while if you take 58 you will attain the same end and adhere to the rule.

I hope, therefore, it will be the pleasure of the house to continue to advance and adopt 58.

MR. VAN WINKLE. Did the gentleman change the number to 58?

MR. BROWN of Kanawha. I would prefer it.

MR. STUART of Doddridge. I would suggest that . . .

THE PRESIDENT. The Chair would remark that in his opinion the 59 would be in order. It would not be the precise question divided.

MR. BROWN of Kanawha. I will make it 59 then, because I prefer that. On the proposition of the gentleman from Marion—which I understand to be substantially this proposition—I think this will work out exactly what he put down as a fact, though I am not certain that is the case, for they may not fall to the same counties; but I think it falls generally throughout the state on the same ratio and that Greenbrier and Monroe will have the largest fractions and be entitled to two delegates; where the other will fall, I am not able to say now. I am satisfied the number 59 does attain the end. It might be possible 58 might fall short.

MR. VAN WINKLE. I want, if the motion prevails, that it shall be 59; for we understand what 54 would do, and then we know that by adding to the counties that are doubles—which are five in number—if 54 simply was adopted, several counties would be relieved. Then there would be five counties still left that would not have a separate representative—five pairs, of course. Now, by adding five to the 54, I can tell how it is going to work out, I think, because the gentleman has told us several times how the 54 would work. Taking the table furnished by the committee, 54 would clear out Wood and Pleasants and take Raleigh out of the 4th delegate district. Then there would be the 1st delegate district to receive an addition of one, the 2nd to receive an addition of one, the 3rd to receive an addition of one, having received one already; the 5th to receive an addition of one, and the 6th to receive an addition of one, make five. That would be the operation of it. Greenbrier and Monroe will receive each an additional delegate. Wood will receive an additional delegate.

I am inclined to favor this amendment, if I understand that the house has established the principle that every county is to have a representative; because the increased number renders the inquality less glaring and the people could more readily reconcile themselves to it. I also favor it, sir, in preference to any proposition that has stood by itself that proposed to give those counties each a delegate on the ground that it leaves the comparative representation between the other counties as it was. It seems to me fairer that if each county is to have a representative the prop-

osition now before us is the fairest we have yet had. Perhaps the more proper way would have been to have voted in, sir, a definite number, say 54, and then voted a separate motion that so many be added; but as the effect will be precisely the same, I do not care about the form. We are not strictly in order, sir, as we will have to strike out the 5th section, which contradicts this. But as we have gone so far, I do not raise any question of error on it. It will attain the same end and express the sense of the house.

MR. SINSEL. I am still opposed to this amendment. It takes 53 number to give to each county a delegate, leaving the balance as arranged by the committee. Well, that six more will add an additional delegate to Kanawha, and she will have three; Mason will have two; Jackson will have two; Greenbrier will have two; Barbour will have two; and Ohio three. You know exactly where they will go. Ohio will get one of these. She has three; Greenbrier will get one, Barbour one, Monroe one and Jackson one. So persons now in voting will know exactly where they are voting this addition to go, for there is precisely where it will go; and it leaves the inequalities in the balance of the counties still greater for what remain than just as they were reported by the committee with a ratio of not much over five thousand; so too the fraction in every other large county will be larger just as you increase the number and assign the addition as you propose to do.

MR. HERVEY. The only difference appears to be a matter of calculation. Taking the data of gentlemen whom I may justly denominate the mathematician of this Convention, the gentleman of Ohio, he in his arrangement of 54 gave the county of Pleasants with a population of 2926, a delegate. Now, sir, if you look at the remaining counties unprovided for, you will find that there is but four of them.

MR. VAN WINKLE. The gentleman forgets the counties in the 4th district.

MR. HERVEY. Then, sir, there must be a county of larger population than Pleasants not provided for.

MR. VAN WINKLE. There is Raleigh. Fifty-four provides for Raleigh.

MR. HERVEY. Certainly. Take the counties which have a less population than 2926 and you will find the number is but four. I cannot find them. I cannot find where that other delegate is to go.

MR. VAN WINKLE. Calhoun is one, Clay is two, McDowell is three, Wyoming is four, Tucker is five. Wyoming, which is the largest, has 2797, which is less than Pleasants. There are five certainly.

MR. HERVEY. Correct, sir.

MR. LAMB. It certainly takes 59 to accomplish the object of the gentleman from Wood. The result, then, of the matter is this: we have twenty counties with a population of 72,751. To them we give a delegate for every 3637 whites. We have 24 counties, with a population of 231 thousand and upwards, and to them we give a delegate for every 5940 whites. This is the principle that is to be adopted by this Convention. The counties which have a population of 231,000 are the counties that raise your revenue. The others are to have the distribution of it and say where it is to go. In the favored district three white men count more than five in the other portion of the Commonwealth. We have not even the poor right of being ranked on an equivalent with the negro in the Constitution of the United States. And I am asked if a principle of this kind is put into this constitution to go before the people of Ohio county and tell them they ought to vote for such a Constitution! Sir, if I wanted to defeat your new state project this is the plan I would be supporting. For I tell you the result of this measure—and it ought to be the result—would be an unanimous vote of the people of Ohio against any constitution that embodied this principle; that brought us back to the old principle we fought against so long, that every county in the State however insignificant should have a delegate; this principle of the equality, not of the people, but of counties. We contended against that for years, under the leadership of Philip Doddridge; and we are not, gentlemen, going to take your new Constitution with that principle embodied in it!

MR. STUART of Doddridge. I am sorry, sir, that the gentleman from Ohio appears to manifest so much feeling in this matter.

MR. LAMB. I have good cause for it.

MR. STUART of Doddridge. I want to reconcile him if possible. I represent the county of Doddridge; and because five men in that county are only equal to one man in Tucker, that is no reason why I am going to oppose this Constitution. I have it in my power now if I choose to do it—I mean the Convention—to refuse to the coun-

ty of Tucker this representation; but if we give up to her, it is the part of magnanimity on our part and it is not forced upon us. And because we choose to be generous towards three or four little counties in our State, is that a reason that we shall assign that our people should vote against the constitution, simply because we are magnanimous towards two or three little counties, when we have it in our power to keep the representation from these little counties? It is a matter of gratuity on our part. It is not sought to be forced upon us by those counties. I pray you from the county of Ohio to be reconciled.

MR. LAMB. Will the gentleman excuse me a moment? It is not because of a single instance of this kind that I have said what I have. It is because your representation is apportioned to twenty counties on the principle I have mentioned. You give these twenty counties a representation in which every three men there count more than five men here; and they are just the counties which do not contribute largely to your state treasury. One set of counties are to raise the money; another set are to say where it shall be expended. It is because of the unequal manner in which you are fixing it; because it becomes a substantial injury to all the large counties; not because it applies to Ohio alone, for it applies to Marshall, to Preston, to Marion, to Harrison, to Kanawha, to all the large revenue producing counties.

MR. STUART of Doddridge. That is all true. You have given that as your reason a great many times, and we perfectly understand it. But I am only trying to reconcile him now to not get into a bad humor here simply because we extend this courtesy to those few little counties. I am willing to adopt an arbitrary rule simply to give these few unrepresented counties a delegate. And I want the gentleman from Ohio to become reconciled; and let me say to him now that the three or four, they all could certainly not rob Ohio; I am sure they cannot; and I do not see they are not satisfied. It seems because a certain number pay a greater amount of revenue than others that they must have an additional amount of representation. Is that the principle we are to go on here? That was the doctrine of eastern Virginia. I do not know what amount of revenue may be raised in Ohio and what in McDowell; but I presume there is a large amount of property there that pays little or no revenue that would be unrepresented; a large amount of property in these small counties that have large territory but would not be represented by population. The amount of property

is not given the amount of population because of many citizens living in other portions of the State that own property there. They will soon take it up; and perhaps if you take it on the principles proposed by the gentleman from Ohio those counties upon the amount of revenue would be entitled to a delegate, and not on population. I do not know how that is. I have not investigated that. These figures—the gentleman from Ohio has not induced me to look into it. The question is upon us and I want to dispose of it in some form or other. And I want to get the gentleman reconciled. I am satisfied the three or four delegates Ohio will have will attend to her interests. If you give her a dozen more, she will not be any better attended to.

MR. BATTELLE. I move the Convention adjourn.
The motion was agreed to and the Convention adjourned.

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XXVIII. TUESDAY, JANUARY 14, 1862.

*The Convention met at the usual hour.

Prayer by Rev. Josiah Simmons, member of the Convention.

The Minutes were read and approved.

The question was stated by the President to be upon the adoption of the amendment offered by Mr. Brown, of Kanawha, to the amendment of Mr. Lamb to the second section of the report of the Committee on the Legislative Department.

And the question being upon this amendment to the amendment the yeas and nays were demanded, and being seconded, the motion was decided in the negative—yeas 11, nays 33.

MR. HALL of Marion, moved that the vote be recorded, which was done as follows:

YEAS — Messrs. John Hall (President), Brown of Kanawha, Chapman, Hansley, Haymond, McCutchen, Ruffner, Stephenson of Clay, Soper, Taylor, Walker—11

*See note, Volume II, page 219.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Battelle, Dering, Dille, Dolly, Hall of Marion, Harrison, Hubbs, Hervey, Irvine, Lamb, Lauck, Montague, Mahon, O'Brien, Parsons, Parker, Paxton, Pomeroy, Robinson, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Stuart of Doddridge, Trainer, Van Winkle, Warder, Wilson—33.

The hour of 12½ o'clock arriving, the Convention took a recess.

AFTERNOON SESSION

Upon the reassembling of the Convention,

The President stated the question as being on the motion of Mr. Lamb to substitute 54 for 46 as the number of the house of delegates.

MR. VAN WINKLE asked for a division of the question.

MR. SINSEL. If it would be in order, I would ask for a division of the question, first on striking out 46.

THE PRESIDENT. The question, then, will be first on striking out 46.

MR. POMEROY. I would like to know what we are going to insert afterwards. If we are going to insert 54, with a fair apportionment, I will go for striking out.

MR. SINSEL. The question is already settled. After striking out we will insert 54, and give each county a delegate.

THE PRESIDENT. The Convention has indicated very clearly its purpose to fill the blank with 54, if 46 is stricken out. That is the only reply that could be given to the gentleman from Hancock.

MR. HERVEY. I would ask the Chair whether a motion for reconsideration of the vote of last evening would now be in order by which the Convention decided to give to each county a delegate?

The Chair would have some doubt as to the peculiar way it stands now. The proposition is to strike out.

MR. VAN WINKLE. The whole amendment is before the Convention.

MR. LAMB. I moved to strike out 46 and insert 54 simply. That motion was amended on the motion of the gentleman from Doddridge by adding to my amendment a provision giving to each county a single delegate. Now if a motion is made to reconsider the motion of the gentleman from Doddridge to amend my amendment, according to authority which was read by the gentleman from Wood a motion to reconsider takes precedence to every thing else except a motion to adjourn. So if that motion is made, we have got to decide the matter.

MR. HERVEY. Do I understand the Chair to allow a motion of reconsideration?

THE PRESIDENT. The Chair remarked that he had doubts about the motion being in order. Will the gentleman from Wood refer to that rule again.

MR. VAN WINKLE read the rule from Jefferson's manual: "When a motion has been once made and carried in the affirmative or negative, it will be in order for any member of the majority to move for a reconsideration thereof on the same or succeeding day; and such motion shall take precedence of all other questions except a motion to adjourn."

THE PRESIDENT. The motion will be in order.

MR. HERVEY. I move, sir, to reconsider the vote of yesterday by which each county was to be allotted a delegate. I voted with the majority.

The motion to reconsider was agreed to, ayes 20, noes 16.

MR. SINSEL. I move to amend the amendment of the gentleman from Ohio by inserting 47, and give that one to Greenbrier.

MR. STUART of Doddridge. The gentleman must recollect that there is an amendment pending to the amendment.

MR. LAMB. The motion of the gentleman from Doddridge is pending now. That has not been disposed of—the original motion the vote on which has just been reconsidered.

THE PRESIDENT. You are now just where you were previous to taking the vote on the motion of the gentleman from Doddridge. The question is now on the motion of the gentleman from Doddridge.

MR. PAXTON. I believe, sir, I have not occupied the time of this Convention on this question, and I shall now say only a few words in explanation of my position and my votes. I have cared very little from the first what number might be determined on as the number of the house of delegates, if the number was kept within reasonable bounds, provided the principle which we have heretofore adopted by an unanimous vote, I believe, of representation according to population be fairly and honestly applied. For that principle I do care. I voted for it and I desire also to vote for its fair and honest application. I cannot vote for a proposition that I think does not fairly carry out the principle. I have listened with a good deal of interest to the discussions on this question, and have listened particularly to the arguments of the gentlemen who have stood up here as the advocates of the smaller counties. I have listened to their remarks to ascertain why it was, what reason they could give for urging upon us the giving to these counties arbitrarily and without regard to population a delegate to which their numbers do not entitle them. Well, now, sir, what is the reason for the distinction? Was it urged on the score of justice to those counties? I think not, sir. Has it been urged upon us as a right to which they are entitled? I have not so understood the argument. What then has been the argument? Well, sir, simply an appeal to the magnanimity of the members of this Convention. We are appealed to be magnanimous. I would inquire of gentlemen whether or not that is a fair consideration to present to us in considering questions of such vital importance, when we are making the organic law of the State, making rules that ought to be founded in simple justice, to govern the future legislation of the State for a long period to come, as we hope. I do not desire to say that I do not wish to be magnanimous, but I wish to be just—not to one class of counties, but to all. I will not, if I know it, be magnanimous at the expense not only of justice but of principle. I cannot persuade myself that I have the right to be magnanimous to the few at the expense of the many. This is a constitutional convention; a convention of gentlemen assembled for the purpose of framing a constitution for the people of West Virginia. It appears to me, sir, that a question of magnanimity ought to have no influence whatever on our action. We have not the right to be magnanimous in these matters. It is our duty I think, to do equal and exact justice to all, without undertaking to exercise magnanimity either to this section or the other section, to this county or the other county.

Entertaining these views, I have uniformly voted against propositions that I thought did violence to the principle we have heretofore adopted, and adopted unanimously.

MR. SOPER. I do not put this right of the counties on magnanimity. I claim it to be a just right arising from their local organizations as counties.

MR. PAXTON. Will the gentleman allow me to ask whether he claims that it is right that Tucker, with a population less than 1400 should have a representation equal to a county of 7000?

MR. SOPER. I insist that this is a right because we have organized this Convention by admitting a delegate from Tucker claiming an equal right with every delegate on this floor. The right of the delegate from Tucker to be here is because the county of Tucker had an organization before this Convention was called. I remarked yesterday, sir, that the whole course of our proceedings on the part of committees with reference to counties was to treat them as equals. I will not repeat what I said yesterday on the subject; but by merely referring to it gentlemen will recollect what I said; and I now rise, sir, to assert that so far as my experience has gone in the formation of a legislature, of what they term the lower house, it has ever been the practice to have representation by counties—has ever been the practice. There may occasionally have been an exception to the general rule; but that would be a very extraordinary circumstance. Now gentlemen have argued this question apparently. If I have understood that argument, they argued it on the ground and supposition that we are to remain here as a State just as we are; that there is to be no alteration in the population of those counties when in our State; and hence they say here, you are, with your 300,000 inhabitants and your 44 counties, some of them containing a large and some a small population. Now let us take and put these small counties on anything like an equality of representation with your large counties. I beg gentlemen to bear in mind that when you fix the number of your delegates, that number will not be varied by any increase of population hereafter; and while gentlemen express a desire to have all the counties represented and while they are stretching, as they say, what they consider to be the rule that ought to govern on occasions of this kind—that they stretched it so far that if we have 54 it will only leave four counties out in the State —it does look to me that four ought not to detain this Convention

a moment, particularly so when we recollect that these counties will be continually increasing in population and it will be but a short time before they will be up to what you admit would be a ratio that you would be willing to adopt.

There is another view on this subject. Many gentlemen have turned their attention to their own individual counties. I speak of gentlemen here from Mason, from Lewis and probably some other have been named, as having large fractional parts, and they talk about injustice. Well, now that is not really so. It would be injustice if we were now fixing a representation for all coming time. But gentlemen will recollect that another apportionment will probably be made in about eight years, and what will be the condition of things then, judging from past experience? Why the small counties, to which we now give a delegate will have such an increase of inhabitants as would entitle them to a delegate on the score of representation according to population. But where will these counties that have now a large fraction be? They would be the first to be provided for at the next apportionment. So you will see that what they now consider would be a disadvantage here, when the next apportionment takes place will prove an advantage. So that I apprehend if we look at it in the light of organizing our State there is no hardship that can be incurred on the part of the county having a large fraction, because she will get the benefit of that fraction at the very next apportionment.

Well, now, another reason why these counties ought to have a voice in your lower house. I remarked yesterday, gentlemen will bear in mind, that these additional members of counties apportioned according to representation would always protect the different interests of the State that wanted protection against any combination on the part of the small counties; and I also cited another check residing in the senate where the apportionment would be strictly in accordance with the financial interests of those concerns who seem to be putting such great stress on the wealth of the country. I do not want to repeat what I said yesterday on this subject; but I want to say this, that if you adopt the apportionment according to the ratio contained in the report of the committee, unless these small counties now get a delegate they never will get a delegate. Unless you are willing to believe, gentlemen, and which may prove true in your estimation, that all portions of the State will increase on the same ratio. If one portion of your State is to increase more than another, that portion that increases most will receive greater advantages when it comes to another apportion-

ment on this principle here contained in the report of the committee. And I am confident that after every subsequent apportionment if the counties are not secured here now in a delegate, there will be more of them thrown out than there are now. That I apprehend will be an irresistible consequence.

Now, why should we not get right down and do the thing which gentlemen say they are desirous of doing if they can without violating principle, that is giving to every county a delegate? Particularly when we know that every county in the State must necessarily increase. There is, if we increase, counties that will be a matter of our own hereafter. I apprehend that no legislature that will assemble under our Constitution will get to the erection and creation of new counties without properly considering the rights and consequences that would result from it under our Constitution. And then again gentlemen will bear in mind that we have fixed a ratio of population which will entitle a county to admission. I hope, therefore, Mr. President, that gentlemen will look at this matter and see the consequences that will result from it and they will find that if we are to form a legislature out of delegates from counties for the purpose of distributing them all over the State, so that each portion of the State, rich and poor, can be equally represented in this way—if that is the true principle on which we ought to apportion our delegates—then most clearly we ought to give these counties that are now asking for it; and in doing that gentlemen will find that there will be no danger result from it.

Now, gentlemen have talked about representing their counties —how should they feel to go back and talk to their people if they should have to take a proposition here to give each county a delegate? Why, gentlemen, I represent a county that within my recollection has never had a delegate that I know of of its own. We are connected with Doddridge, and together we have a population of 12,000. Counties around us that have that population have got a delegate. Now, I say to you, gentlemen, that so far as the popular voice is to be ascertained in my own county, those gentlemen that have spoken here on this subject before, it is to see that Tyler county has a delegate and to see that every county in the State has a delegate. It is something we have always claimed here as a right, and we think it is a right due and belongs to all the counties. That will be the point of view in the county where I live. Instead of decreasing the vote in support of the Constitution it would increase it; because I believe the opinion there uni-

versally prevails that such a distribution of representation ought to be that every county should receive a delegate. Now, gentlemen, eight years hence, if we should be as prosperous as some gentlemen seem to think we should be, the ratio of a delegate if you fix the number at 46 or even 54 would be something like eight or ten thousand. And if you take one-half of that number, you would have to require—every county of the four that are now before us would get a delegate. Is there any gentleman representing a small county who supposes they will not have an increase of population to that amount? I offered an amendment some days since I would have been willing to have suffered our present Constitution to have gone into operation and effect according to the basis reported by the committee provided I could only be assured that at subsequent apportionments, taking a supposed number set forth in the Constitution which would authorize the counties that had that number to a delegate. I proposed four thousand, I did that because I wanted to avoid the inevitable conclusion that at every apportionment that we shall add more and more of these counties. To avoid all those difficulties, I again repeat the true course for us is to give every county a delegate. Increase your number if you please. I do not care how high you go for it. I am willing to go to the highest number any gentleman has named on this floor. I find there is a great dread and fear of getting an excessively large house of delegates. That cannot take place in a Convention of this kind. Gentlemen are too cautious on this subject. Bear in mind that if a house here containing sixty delegates should be considered large now, ten, twenty, thirty, forty or fifty years hence it will be considered small. Every year it will be considered smaller. Well, now, gentlemen that stick here so much for this principle of representing population, would make your apportionment this year. What will be the state of the case next year and the year after, and five years hence? Every year, as we grow, that difference is becoming greater and greater; and if you fix it to-day, tomorrow or next year it will be altered. It is impossible to have your lower house strictly according to this principle of representation by population. Now, I grant, gentlemen if we could do an act that was to remain stationery for all coming time, then there might be some propriety in sticking out for this equal and exact representation according to population; but we cannot do it, and the nearest and most equitable way of getting at it is to give to every county a delegate, knowing the fact that the increase of population will obviate all the difficulties that appear to be in the way of it now.

I hope every gentleman that wishes to give to every county a delegate will adhere to this amendment and vote for it; and I hope they will continue to vote for it; and if it fails, to vote for the highest number of delegates proposed. I regretted extremely when I saw many of these gentlemen who wished to have the smaller counties represented voting against any proposition to have 59, because the more we increase the house of delegates, the less this difficulty will be borne upon those smaller counties. I shall vote for the amendment.

MR. LAMB. The gentleman from Tyler said the amendment would affect only four counties. This is a mistake. It will affect seven counties.

MR. SOPER. At 46 it does; but not at 54.

MR. LAMB. I think in either case it affects seven. Your amendment applies to seven, does not it (to Mr. Stuart)?

MR. STUART of Doddridge. No, sir, five. Adopt your amendment without the amendment, it embraces three small counties and leaves five.

MR. DILLE. Mr. President, I do not desire to occupy any considerable length of time in the discussion of the question that I think has been very elaborately discussed already. I feel an indisposition to do so. But entertaining the views I have always entertained in regard to representation, I cannot let this opportunity pass without uniting my voice and what little influence—I know it is little—that I may possess in favor of that great and fundamental principle of free government, the representation of her people. It was a principle that was inculcated in my early life; and if my prejudices, if my feelings had even been against it when I came to the old commonwealth, the investigation of her history, the course of the distinguished statesmen from the West upon this great and fundamental principle of government would have induced me to have changed my principles, if I had previously entertained them. The wisdom and the importance of sticking closely to the principle of representation upon numbers, as I have always felt, is indispensable. And, really, it is astonishing to me that there can be found in this Convention a single individual who is willing to depart from this fundamental principle without it is impossible under any circumstances to follow it without violating some right which we are unable to accomplish altogether without

doing so. Now, personally I am in favor of representation upon the white population of the State; but I am in favor of a small body. I hold that it is the proper kind in a legislative or republican government; that it is a theory that holds good not only in the ordinary business affairs of life but in all representative assemblies, that where you create a large body you have a less efficient body as a general rule. In other words, if you would increase this body to one hundred members you would not have that efficiency; you might embody a greater amount of talent but you would not have that efficiency and energy in the body that you would have in a smaller body. But that is not really the question under investigation at this time. The question purely is whether we shall depart from this great principle that we have engrafted on our Constitution already by an almost unanimous vote that representation not only now but in every future apportionment of representation equality of representation according to numbers shall be preserved as nearly as possible. Now, I want to appeal to the gentlemen who may entertain this position in reference to county representation what they mean—whether they meant what they say in this provision or whether they intended when they voted upon that to make the idea of representation of the people subservient to county organizations. Or, in other words, did you mean that when you said each individual should be represented so far as possible in the State of West Virginia, or did you intend to have an exception, to except county organizations, and that when county organizations interfered or interrupted the practical application of the provision here engrafted, then it was that numbers had nothing to do with the question—nothing to do with the proposition. I don't believe that they ever entertained such an idea. Upon the contrary, I believe that at that period in the history of the deliberations of this body every member who voted upon it intended to carry out in the very substance and spirit of that provision the principle there entertained. But some mysterious and incomprehensible idea to me has come over the spirit of their dreams; the lust for power, the desire, is natural with us all—the desire to get more than belongs to us is too natural in us all. I am willing to concede it; yet, really, when we are establishing a fundamental law, a constitution, not only for us but for our children after us, we ought to lay aside any such groveling, any such mean and unworthy principles, because those who may come after us may be our children and they may reap the reward of our misdoings here.

Now, sir, I hold that so far as county lines are concerned it does not change the character of a single man. I hold that a mountaineer in Preston is just as much a man, just as much a freeman, and should have just the same weight in this body or in any representative body that may be established as the favored son of the county of Ohio or the citizen of the county of my friend from Tyler. But when I say this, I ask nothing more for my people, I desire nothing more for them than I am willing to accord to the constituents of my friend from the county of Tyler and I hold that county lines do not change the relative character or the relative conduct and weight which any man should exert anywhere; nor will I say here or any place will I take the position that a man who possess a few paltry dollars, who can scarcely view his territory, who can scarcely manage his estates, is entitled, so far as government is concerned to any more weight as a citizen in the choice of representatives, in the power that they represent or shall possess than I or the poorest constituent in my county. I say that I discard such principles. I disown them, because they are neither republican nor democratic, nor are they consistent with the advanced spirit of the age. They are in violation of every teaching that I have received from the best and purest statesmen that have adorned this country. No, sir, I tell you when these gentlemen from the little counties will look at this question, when they will weigh it, as I am satisfied they will, when they feel that the larger counties of this State have no desire to deprive them of a single right—you have the same representation as we have, we have given you the same weight in legislation relatively that the larger counties possess; each one of your citizens counts for just as much in the legislation of the State as the citizen in any of the larger counties counts—and really, if you will examine the report of this committee you find an inclination not only in reference to you so far as the fractions are concerned to go a little farther that strict equality would require; and this disposition is extended, and in fact whenever your population increases to half this ratio, then they become magnanimous to you. They have been generous in this report, but they become magnanimous and give you a representation when you are really only entitled to a half of a representative.

But, says my friend from Tyler, unless we give it to these people now, they will never get it. I do not believe it. I am a friend of these little counties. I know some of them. I know their people. I know their territory. I know that they have capacities,

and I would patiently look forward to the period in the history of West Virginia when these little counties, with a population from 1300 to 2000 will be numbered amongst the large counties of the new State. Why, sir, I have in part the honor to represent here on this floor the county of Preston. It has only been a few years with all the difficulties, with all the embarrassments connected with oppressive legislation and unjust course of the eastern portion of the State of Virginia against us—that with all that the county of Preston now in point of population, in point of numbers her old mother; and I feel satisfied when I think of this that it will only take a few revolving years to make the little county of Tucker larger than good old Randolph. You have only to look forward, you have but to be patient and you will get your rights and you will realize that this Convention has been more than just to you, has been magnanimous.

Such is my attitude in reference to this question. Although it may be a pleasant theme to discuss I am satisfied the members have so investigated the question before us that it is unnecessary for me to make any further remarks upon the subject.

MR. VAN WINKLE. Mr. President, I have not occupied any of the time of this Convention since this week commenced, neither yesterday nor to-day, until now, partly, sir, because I was somewhat mortified to witness what direction this debate is assuming. My recollection, sir, of the convention of 1850-51 and of the year that preceded it is very vivid. I was among those who were most active in fighting that battle and I well remember what was the war-cry and what was the object of the fight. I have besides, sir, had my recollection refreshed since I have been here by the object of the fight in 1830, when our great man Phillip Doddridge, for whom one of our counties has been named, stood up manfully and boldly to defend the rights of western Virginia, placing it upon that ground, contending for it in that name and triumphing; for he did triumph although the apportionment then made professes to be arbitrary but literally as between the two great sections of the State it is on the white population and nothing else. Between the two eastern districts, it is according to white population. Between the two western districts, the Valley had one more than it should have had; the trans-Allegheny district one less. But, sir, that was directly against the idea of county representation; and while I do not accuse my friend from Doddridge of attempting to renew that old doctrine, yet, sir, I am sorry that an advocacy of

it as come from any quarter. It is in vain, sir, in vain for the people to contend and toil for the establishment of principle if when the first case arises in which the principle seems to inflict a seeming injustice, the old abuse is to be brought up again; to correct a supposed injustice in the case of some four or five counties a repudiated principle, one that has been condemned by the whole of western Virginia is to be revived for the time being. And, now, sir, what is that principle? I have to-day heard for the first time an attempted explanation of its propriety and justice. We heard that there was some principle on which it stood, but did not hear what the principle was unless it is that there is something sacred in the name of a county organization. Now, sir, we all know that counties are not an integral part of a state. They do not hold that relation to the State which the different states hold to the Union. You may abolish all the county lines and yet the State would remain; but attempt to interfere with the lines of the states, and you lose the very distinguishing feature of our national government.

Sir, the county of Tyler was within my recollection represented for many years by its own delegate and by a gentleman who was in this house this morning. The county of Tyler had its separate representation and enjoyed it; and until this furor for making a lot of counties to serve the purposes of one or two individuals, Tyler retained her separate representation. If the yielding of anything to the small counties depended on any recognition of this principle of county representation I should consider myself bound to oppose it even by way of a compromise, and that is what I fear we shall have to come to in the end. But, as I said before, I do not understand the gentleman from Doddridge as holding up the principle of county organization. He puts it entirely on other grounds—on magnanimity. That is what he calls it. I shall call it favoritism. Names are nothing, sir; things are everything; and about a matter of taste as we may say there is no disputing; but so far from considering that there is any magnanimity here in depriving—I was going to say ninety-nine hundreths, for it is nearly that, of the people of the State of a fair representation and give it to the other one-hundredth—that instead of there being any magnanimity in depriving the larger number of their rights and giving them to the smaller, the magnanimity would lie, it seems to me, in doing as nearly as you can exact justice to all. Gentlemen argue this matter as if these small counties were deprived of representation. That everybody knows is not so. The only question

is, are they for their limited numbers to be entitled to the same privileges with other counties that have greater numbers? State the case and it ought to be enough to defeat such a claim. It carries on its face iniquity and injustice. You cannot give to them unless you deprive others. But that is what is proposed. I trust, sir, however, that there is no disposition here, except in the one instance where it has been advocated, to revive this old idea of county representation. For I do not believe the gentleman from Doddridge nor many of those who voted with him have that in view when they opposed this, but the effect is similar so far as the small counties are concerned.

But, sir, I now want to come back to see what we struggled for in 1850—what there was that threw this whole state into a turmoil. To my knowledge, every member from the west had drawn his pay; and if the first act of the convention when it assembled on that date had not been the appointment of a committee of compromise giving the west a majority, every member would have left. Sir, it was as near revolution as we have ever approached until we fell on these evil days, since the revolution of 1776; and that is what western men were willing to do and risk to maintain the principle which was compromised with them. Now, sir, what was that principle? What was contended for by the men of the east in reference to representation in the assembly? It was that representation should be founded on a combined ratio of property and of persons; of property as represented by taxation, and of free white persons. And what did the west contend for? They contended very explicitly—there is no possibility of a mistake about it; there is no possibility of saying we do not know what they contended for. It is patent in all the papers of that day; it is patent in the present constitution of the state; and what they contended for was this: that representation should be founded on the white population of the state, and upon nothing else. They were not willing that some $478 (I think that was the amount) of property should count as much as one free citizen. Yet that was the iniquitous rule proposed to us. We contended until we obtained that compromise committee and the compromise they brought in was that the house of delegates should be apportioned precisely on the "white basis" as nearly as possible while the senate was to be continued for a time on the "mixed basis," and in 1865 the question was to be submitted to the people. And who has had any doubts that if our relations with eastern Virginia had continued and the year 1865 had arrived and the three alternatives, I

believe there were, submitted to the people—who has any doubt, at any rate among those who made the struggle of 1850-51, that every one which proposed to put the senate also on the basis of white population of the state would have succeeded?

Now, will any gentleman tell me that a principle that excited all that feeling in this commonwealth in 1851—a principle in vindication of which your fellow citizens of the west and of the Valley were willing to have left that convention and to have risked the consequences of such an act, believing as they did most certainly that they would have been justified before the people—is any one to tell me that principle has lost anything in value since that day? Is any one to tell me the circumstances of this state have so changed that the principle is no longer valuable? Is any one to tell me in setting up a new state here, to be composed only of the west that the principle is not as well worth preserving for the new State as it was for the old? O, sir, it may be said in reply to this, we only propose a small departure from it. There is the very point to which I would ask the attention of gentlemen. Instead of proposing a small departure from it, in my opinion you are proposing a very wide departure from it, because if this amendment now under consideration prevails, you are going to perpetuate in your Constitution this rule of county apportionment founded on something less than the white population; you are going to perpetuate it in your Constitution as long as the Constitution shall last, if it ever comes into existence with such a clause in it. Aye, sir, ten years hence—or as some gentlemen have wished to introduce an intermediate period of five years—whenever a census is taken so that a new apportionment is necessary, there stands the principle still and there a bait held out to cut up and subdivide your counties until the same difficulty we experience now will grow still greater. Sir, when we have a principle, if we are satisfied with the correctness of that principle; if, especially, that principle has been approved not only by our own judgment but by that of those who have preceded us and surround us everywhere; if it is such a principle of government as has been approved by our fathers; if it is a principle that is cherished through the breadth and length of this nation; if it is a principle that has been approved wherever free government prevails, and wherever there is an effort to establish free government—let us not think it is a light or trifling matter when we talk about tampering with it. Sir, I want some stronger argument than the mere gratification of gentlemen who want to be "magnanimous"—at somebody else's expense. I should

like to gratify them, or the people of these small counties. But I want a stronger argument than the mere temporary, momentary, gratification, if you please, of these no doubt highly respectable fellow-citizens, to induce me to step aside one iota from this principle beyond what is rendered necessary by the very circumstances in which we are situated.

Our county organizations, sir, are for convenience. They are not so much for convenience for our representation in the legislature as for many other things. It is necessary for the convenience of the people that they exist as subordinate divisions of territory. And, sir, if we go back to the true theory of government that of the people themselves, it is only for their convenience that the intervention of a representative becomes necessary. That convenience is an argument, or a fact, to which some attention I admit must be paid; and therefore we have, in assigning these representatives, have done it as far as possible by county lines; and, sir, if the number fifty-four or a greater number is chosen here the variations or fractions that will be left after the representation has been assigned in the counties entitled to representatives, will not vary greatly—will not be so large as to do any great injustice. They will hardly be greater than the population of these small counties which it is proposed to vest with a representative. We must adapt ourselves, in some way or other, to circumstances, it is true, and therefore the rule is that we will follow out the principle as nearly as possible. Now, gentlemen must understand a principle is not a rule and a rule is not a principle. The principle here is equal representation, and the rule is to apportion representation according to population as nearly as possible. One is the principle; the other the rule that is derived from it. Now, I would not be too strenuous about small fractions; about a small departure here and there which the convenience of the people here and there may demand, or which the stubbornness of figures may render necessary; but when it comes to avowed abandonment of principle—for I believe the principle has been treated as a light matter by some of the gentlemen who have spoken here—an abandonment, a setting aside or a depreciation of principle—I cannot consent to it. Sir, to speak of what may be said out of doors, or whether the course taken here may be approved or not, is not an argument that should weigh greatly upon us. We should know we are sent here to establish a government in accordance with republican and democratic principles. I do not mean the principles of the parties designated by these names; but I mean those fundamental prin-

ciples of government which we describe by those words. We have been sent here to establish a government with principles that have been cherished by our nation ever since it was a nation; by our ancestors ever since the English revolution and by others even previous to that. That is our guide. We are sent here, absolutely under the Constitution of the United States, to make a government republican in form. Our theory of construction is precise enough and broad enough. It tells us we are to establish a government here in accordance with those cherished principles of liberty in which our forefathers delighted; and, now, sir, if we find the principle sanctioned by them that was engrafted by them on our national Union, that stares us in the face at every page of the Constitution they made, can we doubt that we are in the right path when we are following in their footsteps? But, sir, if even the strictest adherence to this principle should lead to some seeming injustice in this quarter or that, with no better justification when we go back to the people who have sent us here than to say, we admit it does work some hardship here and it does seem to work hardship there, but we have followed the principle which was set before us as our guide and chart in erecting this government and could not see a better way than for you to submit to some inconvenience—to some seeming injustice, if you please, better even to submit to that for a while until the circumstances of a new apportionment shall right the matter and make it more in accordance with your wishes; better to submit to that—aye, better to submit to ten times that than to do anything that would seem to cast even a slur on a principle that has been so sacredly established among us.

Now, if this matter could end with the present apportionment, I should have less objection to it; but as it stands here it remains engrafted in this Constitution so long as the Constitution shall last; and when will be the day—when will that time come—when a human institution can be so framed as to be perfect in every respect? Sir, we are seemingly trying at impossibilities; we are trying to make a constitution here that is to satisfy everybody in every particular, and we find that the first step we take in avoidance of principle brings up an injustice on the other side. Give to these counties that are not entitled by the rule that has been adopted a full representative and that representation must be taken from somewheres else. There is no escape from that. Because if you fix a number of representatives and divide them and then make an addition to it and give these remaining counties each one after you have assigned each county its relative proportion of the whole,

the addition thus made reduces the power exercised by the other counties just that much. If there were fifty representatives and my county had one, it is one-fiftieth; but when you raise the whole number to 56 and give me but one I am but one fifty-sixth of the whole. And thus whenever you attempt to rectify an apparent hardship in one direction, you are just inflicting the same hardship in another direction.

Now, what shall we do? How can we reconcile this conflict of interests and circumstances? What shall we do to avoid this inflexibility of figures to county lines? Sir, there is but one course for wise men to adopt under these and all other circumstances. It is, sir, alongside the great maxim that under all circumstances we do right and leave the results to Providence. In this case, we should follow our principle as far as it will go—as far and closely as it is possible to follow it; and if it does inflict seeming injustice here or a seeming injustice there, we may be very certain of this that any departure from it will render greater injustice than by adhering to it. The principle's results will unquestionably prevent that injustice. If the principle should be wrong, the closer you stick to it the worse it will be. But we all recognize that representation according to population is the correct principle. We have already certified that by our votes here two or three times. Now, what we should have done is this. All this matter should have been considered under another section. There is a section here that is lower down, I believe it has been before us, however, which provides how this representation shall be apportioned. The rule is there given—if it is a rule and not a principle, is an effort to adapt itself to these very circumstances of these inflexible county lines and these inflexible figures. That rule says that you shall ascertain a divisor, and you shall work with that assigning to each county its one, or two, or more members as that divisor gives it; and then you have remainders and fractions, and what will you do with them? You will take the remaining number of representatives and assign them one to each county whose fraction is over one-half of the divisor. If that would work injustice, say it shall be to all whose fraction is over a third. But fix your rule, and do that apart from these personal considerations. If we could have done that without saying how it was to apply to any county—if we could have settled the rule free from any bias of that kind, would it not have been the part of wisdom, rather than to have adhered inflexibly to that? We would have settled the rule according to our best ideas of right and justice according to a principle of our

government. And will it not be well in all cases that arise hereafter in the debates of this Convention wherever rivalry of different counties or territories of any kind, with different interests are to come up here, to settle the rule as derived from those principles before us and then apply it inflexibly and let it work as it may? Sir, we are not perfect. We are not in many cases perhaps free from bias. So far as we know the bias is upon our minds we can cast it off. But every man who has tried a case before a jury knows that there are biases on the minds of almost every man of which the man is sensible. He does not know how far they control his opinions in reference to many matters. But if the other course is adopted—if we are settling the rule according to principle; if we do not know how the rule is going to work in particular cases, there is enough love of justice in man perhaps to make a rule as good as it could be made. If that is once understood; if we know we have adopted a good rule; if that rule satisfies our own best reflection, the best examination we can give it, then is it not the part of wisdom to carry it out inflexibly? Now, sir, this is what we may do here. We may now, even at the stage we have got it, when we do know the operation of any form of apportionment, we may go back in our minds and canvass there and ascertain what is the basis of the rule of apportionment, and having ascertained that—I mean always under the principle which we have adopted and which we mean to adhere to generally—having ascertained that, ought we not, out of a sense of justice, knowing that a departure from the rule in any direction inflicts an injustice in another—will it not be the part of wise men, of men determined to do their duty and knowing no outside or improper influences, to discard if possible from our minds those secret biases which are in the mind of every men—will it not be proper even now to go back and review the whole ground and see that our rule is correct and then adhere to it and the principle on which it is founded?

MR. STUART of Doddridge. I am sorry, sir, that this question is again before us; and I must be permitted to say because I have differed with some gentlemen in this Convention I do so with the kindest feelings and because I cannot just see as they do. It seems to me we might be likened to the unjust judge. The gentleman from the county of Wood, you know. He was disposed to do justice to the widow; but, at last, by her continually coming he became wearied of her. I presume the gentleman from Wood and Ohio think we will do justice after a while because they will weary

us into it. I am pretty nigh wearied now, and if it was not that I made this motion to amend I would not even make a suggestion. I do not intend to argue the case because it has been so fully argued by my friend from Tyler. The argument adduced is forcible and sufficient to convince my mind that the amendment proposed by me should be adopted. But it will be understood, Mr. President, that I am not opposed to principle and I was willing to take the principle as reported by the committee. It was not on any motion of mine that that report is sought to be disturbed; and I never sought to offer an amendment until the amendment of the gentleman from Wood was proposed; to which I offered an amendment. I was willing as one member of this Convention to be governed by the principle adopted in our fundamental rules and by the rule as carried out by the committee report. But when I see an amendment proposed here that proposed to disturb this report which had adopted the rule as far as practicable to be governed by the principle, then I was not willing to see the principle carried to a certain extent until it reached a certain result and then stop. Now, principle may be abused, it appears to me, at least this can. You can carry out this principle by the amendment of the gentleman from Ohio until it reaches a certain result and then stop there. But that result operates favorably, I must insist, towards the large counties. If gentlemen are so much in favor of carrying out the principle, why do they seek to disturb the report of the committee that was based on the principle. If they sought to disturb it for the purpose of carrying out the principle to effect a certain result, then, sir, you see there is a motive. It was purely a principle as embodied in the report of the committee; but now it is sought to be managed for a motive. That is the way I look at it; and looking at it in that way, I can see no good reason for this amendment unless we could make it reach the smaller counties, because all the other counties were represented.

MR. LAMB. So are the small ones.

MR. STUART of Doddridge. Why seek to disturb it unless, as I before remarked, to reach a certain result, and that result to operate favorably to the larger counties. Then why stop? If this principle was to be carried out to reach a certain thing, it was time to offer my amendment to the amendment; that if we vote to disturb this thing we may reach what I think is the proper motive that should influence the minds of this body. Now, the gentleman from Ohio was turned over by the gentleman from Wood. They

have dropped the figures and gone solely on the principle. The gentleman from Wood alluded to an argument that I submitted, I believe yesterday or two or three days ago, or some time since. And excuse me for another remark, that unless we are governed here by our action, unless we proceed and do things and go on with them and not be changing eternally what we have done, changing our opinions, turning over again—I will begin to think the legislative action up here is beginning to look to proper results also. I do not see why we cannot come to a conclusion at once, and when we have adopted a certain proposition or rule and go on with it. I have not changed my mind since I have commenced the argument. I was willing to support the report of the committee. I am willing now to support it; but if it is to be amended at all, I want the amendment to the amendment too adopted.

But the gentleman said he had been fighting for this principle down in eastern Virginia, in Richmond, in 1850. What was the principle he there fought? Let us make a comparison and see whether the gentleman is right or whether I am right. The principle the gentleman from Wood fought in Richmond in the year 1850 was that the majority was forcing on a minority an inequality. Here it is the majority giving to the minority. We have it in our power. Down there, the gentleman was fighting against the majority in the convention, a majority in the legislative halls, a majority that had a right to dictate their own course and their own views. Here we have a right to adopt our own views and dictate the course that shall be followed out; and simply because I used the word "magnanimous" to give to the four or five little counties when we had it in our power to exclude them exception is taken. They do not have the power to force this doctrine on us; but if we give it, we give it as a gratuity, while the question he fought there was against the majority forcing it upon the minority.

MR. VAN WINKLE. Will the gentleman allow me to make a remark.

MR. STUART of Doddridge. Certainly.

MR. VAN WINKLE. Well, then, if I should take a dollar out of my pocket and give it to somebody who needs it, that may pass for magnanimity; but if I put my hand in your pocket and take a dollar and give it to him I don't think that is any great magnanimity.

MR. STUART of Doddridge. But we are putting our hands into our own pockets.

MR. VAN WINKLE. No, sir; into mine.

MR. STUART of Doddridge. I do not think so, because it is certainly a majority of the counties represented on this floor and they have a right, upon the principle that has been adopted to allot a representative to any county. Then if a majority has this right, we are putting our hands into our own pockets and voluntarily giving it to the small counties. I want the gentleman from Wood to help us. If he wants to depart from principle and carry out this principle to result, I want it to reach my result and not his result, if it can be carried out. If the amendment to the amendment is not adopted, the question will recur on the amendment of the gentleman from Ohio; that is, to strike out 46 and insert 54. I must go back to figures just a few minutes. I don't intend to detain you. The number 54 gives a ratio of 5637, a fraction of 2618; that is, 2820 would be a fraction exceeding one-half the ratio. Well, sir, the number 54 will give to Barbour, with a fraction of 3092 an additional representative. I want you all to understand it. Greenbrier will get an additional representative, with a fraction of 5154. Monroe will get one with a fraction of 3889. Pleasants would get a representative with a fraction of 2926. Raleigh will get one with a fraction of 3291. Mason will get a representative with a fraction of 3115. Ohio will get another representative, making four, with a fraction of 5285. And then Wyoming will get a delegate with a fraction of 2796. That I believe embraces the eight. If it does not, my neighbor's county of Kanawha comes in next, and I believe it will. I have not made the figures to know exactly but I believe Kanawha for a fraction of 2513 will get an additional representative, which makes three. Well, sir, let us look at the result. The principle I desire to carry out till it reaches a certain result, and let us examine the result for a few moments I want to reiterate an argument I made yesterday or the day before—which I do not like to do—and call your attention to figures. It is hard to recollect figures, and harder to make them sometimes.

Well, sir, then we will give to Kanawha for a fraction of 2513 a delegate, which will be three delegates to Kanawha. She gets one delegate for a fraction of 2513. Now, sir, the reiteration. Here is the district of Calhoun and Gilmer, with a population of 6177, almost three times as much as the fraction that gives Kanawha an additional delegate. Well, now the result I want to reach.

I want to give to each of those two a delegate for a fraction larger than the fraction which gives Kanawha one. Is there anything unfair in that? Because it will operate unfairly and the unfairness will result to these small counties which I am disposed, if possible, to lean towards. And I have stood and fought for them until I find the representatives of the small counties themselves forsaking me. And I am not going to fight much more. But I want gentlemen to understand distinctly the extent and see the effect and operation of it. If I was satisfied you understood it, I would not trouble you with a solitary word more, because it is not for the pleasure of speaking. I speak because I think it is right this thing should be distinctly understood and not for any other purpose. I am governed in this thing from principle, I must say to the gentleman from Wood, not viewing these matters lightly. Then, sir, you give to Kanawha for this small fraction of twenty-five hundred inhabitants one delegate and say you will not give it to the delegate district that has six thousand and something, nearly three times the number of the fraction you give it to. Well, now, that is not a case where it will operate unfairly in carrying out the amendment of the gentleman from Ohio. It gives, sir, to Jackson an additional delegate, as I remarked, for a fraction of 2800, while Clay and Braxton with a population of 6646 have but one delegate.

But you turn round and carry out the principle, in order to reach your result that will give a delegate to Jackson for a small fraction below one-third the population of the delegate district of Clay and Braxton instead of giving it to those counties, in order that the county might have a representative. Well, sir, here is another district, Webster and Nicholas; here is Tucker and Randolph with 6189, while the amendment of the gentleman from Kanawha will give it for small fractions, below one-third the amount of that delegate district they will give it to the larger counties. I can see nothing in it that is fair.

Now, sir, if the report of the committee had been 54 and they had allotted it according to the rule which should govern them, dividing the number, being governed by a certain ratio, I would not have complained and never would have offered an amendment to the number 54. But when I see it coming in here reported 46, then an amendment is made to reach such and such a result, operating as it does, I feel like offering the amendment I have offered. I stand here vindicating the amendment to the amendment in opposition to the amendment. But, sir, I do not want to allude to

the argument of my friend from Tyler because it was forcibly put and conclusive; but I must say to the gentleman from Wood that we propose to adopt a proposition here which will stop difficulty in the future, and the only thing we look to now is merely the five small counties, which we propose to remedy and reach by the amendment to the amendment. We propose to adopt a principle that no county shall be hereafter of a less area than so much nor a less population than 4,000 and it shall not be taken off of any county which is thereby reduced below the same area and the same population. Even if we adopt this principle this question can never come up again. It is simply looking to the four or five little counties now and we never will have the trouble in future. The gentleman intimated that if it was to stop here he might be willing to adopt that amendment to the amendment. Let me say to him in my honest opinion that will stop here, and we will have no difficulty in the future.

Now, Mr. President, I believe that I have said all that I ever expect to say in this body in favor of giving separate delegates to these small counties. Let me say to the gentlemen who feel interested in this question that the only way you will get it will be by adopting the amendment to the amendment. If you vote that down, sir, you lose it, and also I believe the number 54 will go over, for I feel even now rather inclined to vote against it if the amendment to the amendment is not adopted.

MR. SOPER. A word of explanation. My friend from Wood has addressed the Convention apparently under the impression that I am in my view of representation violating a solemn principle adopted in the report of the committee upon fundamental principles. I wish to explain and show that I recognize that principle as a general one; and I am only acting within the exception contained in that principle. The difference between myself and the committee who have made this report is this, sir, the principle contained in the report of the Committee on Fundamental Provisions is violated probably by both of us, or we both seek to take advantage of the exception there. In doing it I begin by giving every county a delegate and after every county has a delegate the additional delegates are to be apportioned strictly according to the number of the white population. On the other hand, the gentlemen on the other side began by apportioning according to representation, and then they violate the principle by throwing away one-half of it. Now, there is the only difference between us. We

both of us, I suppose, intend to adhere to that general principle, that representation, as near as may be, shall be according to the free white population. I wish to make that explanation, and then it will be seen whether or no there is any violation of that principle, yet the violation on my part is not more in accordance with justice and principles of right than that on the other side. I leave that for the Convention to determine.

MR. VAN WINKLE. I certainly understood the gentleman as defending the county scheme, that is to say: that by reason of county organization they were entitled to have representation. That is what I understood him to say. That is what I combat. I am very glad to hear him make the remarks he does now in explanation.

I will say another thing as well in reply to the remarks just made as some that I incidentally omitted when I was up. That is, why I prefer 54 to 46. In accordance with the rule we have adopted, the apportionment of representation according to white population as near as possible, 46 leaves an aggregate fraction of 138,000; 54 leaves an aggregate fraction of only 90,000. So there is one-half lesser number in favor of 54 over 46. Again, sir, I cannot persuade myself that there can be anything like an approach to justice in giving to five counties with an aggregate population of a little over eight thousand (8700 it may be) five delegates when several counties in the State having an equal population will get but one. Whatever system is pursued in a house of any given number by giving to those who are not entitled to it according to their white population you rob others who are entitled by their population. Now, gentlemen may take any horn of the dilemma they please but they cannot escape that. You cannot give it in one place without taking it from another. Now, that is injustice; it is plain, palpable injustice according to my conception of things. I would not object to a good scheme of compromise, by which I do not understand giving the whole on one side and getting nothing on the other, but some intermediate plan that could be adhered to that was fair and did not make our present apportionment arbitrary; but I cannot consent to engraft into our Constitution as a rule for future action one which I believe to be so unjust in its operation and one which we must all admit violates our accepted principle. There are some evils attending it now, which the adoption of this arbitrary plan would only perpetuate and perhaps increase in the future. If we could read the future and tell what

will be the state of things when the next apportionment is made, we might by some rule that would work right provide against danger. But we cannot do that; and, sir, as I remarked when I was up the other day if we suppose a new apportionment is to be made in ten years and could tell what the population would then be, or five years hence, we might take that as a fair average and assign from that. It might be a very just and equitable plan. We can, however, say, in anticipation that the inequalities as to numbers will be greater probably at the end of five years than they are now. Because—this I showed the other day—with the same ratio of increase all over the State a positive number giving a representative must be greater for a county of ten thousand than for one of 2000. The first if it increases one-fourth becomes 12,500; the other 2500. The injustice, the inequality, the discrepancy are all likely to increase.

I do not wish to allude more particularly to the situation of some of these small counties, but in the nature of things a rapid increase of population cannot be expected in those counties that are to be devoted mainly to grazing purposes; whereas the manufacturing and commercial counties increase their numbers almost always in a very rapid ratio.

Therefore, I said before, I am prepared to adopt something like an intermediate compromise, provided it is not engrafted on the Constitution as a rule for the future; to make the proportion arbitrary, but not to leave it on the Constitution.

MR. PARSONS. I would feel truly glad if this question could be dispensed with. It appears Tucker has been the text of the Convention for several days. As one of the reasons why I should be glad if we could dispense with that question it has been so ably discussed. I would feel truly glad if this Convention could feel that it should give us a representative. We never have been represented, sir, when we belonged to Randolph. We lived in the extreme end of the county. The result was a representative was always selected from the town of Beverly or above that. We had to go some thirty miles for our county seat. One gentleman stated on this floor that new counties were made frequently to favor some rich man. That was not the case in Tucker. It was to benefit a number of citizens that they might not have so far to go to their county seat. Since we have been formed into a county the result has been that we never have had a representative from our end of the county. It has been by a man living some thirty, forty, or

fifty miles south of us; and the result has been they have never favored our county whatever. We have never got any of the advantages of the legislature. But yet we think it is just. My friend said he did not intend to go any further with us; believed I had left him. I for one feel like going no further. I am favorable to a new state. I want a new state under any circumstances. But I am prompted by the rule to do justice. I do hope that we may get through with the question, that Tucker may not be the text any longer.

MR. HALL of Marion. Mr. President, I do not design to occupy the time of the Convention. I only wish to add one or two suggestions to the able arguments we have had on this question and to say that after the argument and the facts referred to by the gentleman from Wood county—facts that all well remember and know —that are just as well known to every man, woman and child in this part of the State as their alphabet—when you referred to that fact and the feelings that exist throughout this broad country—and when there was not a man, woman or child in the country that did not participate in that—I ask you how you dare thrust that thing on them now? Whether you call it "magnanimity" or any other name. I hope gentlemen will bear this in mind. But for the suggestion of my friend from Wood, I should not have added a word to these thoughts and suggestions of compromise. I must, for one—I will take any number; I will take any figures that will avoid any hardship; but for compromising one iota of that principle I never will, and my people at home never will. If I grow generous at their expense; if I thrust my hand into their pockets and take their money they would complain. But when I tell them I am bartering away their rights, they will tell me I have more than robbed them. Now, sir, it was suggested by the gentleman from Wood, very properly, too, and I concur in it to the full extent that we should not be influenced here by opinions that might be expressed outside. I concur in that sentiment; but we ought to remember that when we act here what our people outside will demand of us, and do our work so they will approve it when we are done. I, like the gentleman from Tucker, am so anxious to have a new state I will suffer anything that does not sacrifice principle; and we ought to be careful not to send forth our work with the seeds of death in it and thus destroy all our efforts in the past. I say it is on account of that thing that I beg gentlemen to remember. I ask who in northwestern Virginia, until the question was

brought up here has ever advocated anything other than the principle of equal representation founded on the white basis? Where were our men to whom we have always looked—the gentleman from Monongalia, who on account of illness was not here—where was he? What was his position in 1850? and at all times since? Where was the gentleman from Kanawha, who is not now with us —the two gentlemen from Kanawha? My friend from Wood, and every man who is in any position of prominence throughout the whole northwest—I ask what was their position? There was but one voice, and that has been caught up by every man throughout this country; and never has there been any opportunity for them to forget it, because the injustice of this thing has been dinned about them until now they conclude we are about to free ourselves from it and by calling it the pretty name of "magnanimity" we are asked to repeat the same thing, to forget all the wrong of it and all our determination to be free from it.

My friend from Tyler says he does not seek to violate this principle more than some other proposition would really violate it. Will two wrongs make a right? It is said in grammar that two negatives are sometimes equivalent to an affirmative; but it is not said anywhere that two wrongs will make one right. It will not do it. But my friend from Doddridge gets disheartened because the little counties are falling off and some other gentlemen that spoke before him intimated as much. I was glad to hear from my friend from Tucker, to see that he was falling off and why he says he wants to be just. Gentlemen, that is the true position. That is what we must be. It is what our people demand of us. And they abate not one iota. We dare not do otherwise. Let us be generous with our own; but let us be just with what belongs to others. Did the people who sent me here authorize me to barter away this principle which is already established, because of which we were sent here? Not a particle of it. I have no more right to do it than I have to put my hand in my neighbor's pocket and take his cash. The offence of taking the cash would be a trifle by the side of it. Bartering away the rights of my people! Now, we have heard throughout this whole argument that there is some hardship in this principle. Now, I ask where and how, and if you are not borrowing trouble. As remarked by the gentleman from Wood, if there is any hardship about the thing it will fall upon us when we come to the question of the rule, the application of the rule. That we have not yet reached in our action if I understand aright. At least if it has been reached . . .

MR. VAN WINKLE. It is passed.

MR. HALL of Marion. It is passed. Well, I will not refer to that then because I do not know the form in which it passed. I did not read closely the action of the Convention before I returned. But this is not the place; this is not the means. If there is hardship in the rule, then correct the rule, but save the principle. That is what you must do. And you can do nothing else unless you shall determine to go to sea. Whenever you propose to go outside of the principle, what is the consequence? Why, sir, how have we agreed here in this house? How have we managed it when we threw away the rudder? And if we could not manage it here in our small body how could this great people reconcile that thing? No, sir, the principle is either right or it is wrong. If it is not wrong, we have wrong and false, clamoring all over this country ever since I can recollect. We have been deceitful or deluded, and have raised a false clamor against the east; and we have held false views as to what was a proper basis of a free government; and we have been under a delusion, lo these many years and all the time. Well, then, if it is right and you apply it by a proper rule, no man can suffer, no injustice can be done to anybody. Now, what has all this thing grown out of? And where is the great importance of adhering to a principle by a fixed rule, a proper rule? It is in order to prevent a continual, unceasing and eternal agitation in a system of log-rolling that will pervade your entire country forever unless it is barred in this manner. And will you presume to say that log-rolling has not opened up this very discussion, this very departure from this rule? If we are to log-roll in the very onset and destroy the very foundation stones of the government, I would not give you a blue bean for it if you succeeded in the destruction of that principle. Now, I do not mean any discourtesy about it; but I take upon myself to say that while that has been the fact—and while I do not claim to be more free from these local influences than any other person—I have been so situated that I have not been led into temptation and therefore I have had no cause. I do not say that I am so pure or would be any more virtuous if I were lead into temptation; but I say it has been all this sort of local influences that has led to the proposition to depart from that principle; and we were further ahead and stood in a better position at the beginning of this week than we do now on this very question, and that too at the instance of men who are so very tired of this thing that they do not want to hear any more

of it; are going all at once to leave it off; who, by the way, were the very persons who opened the Pandora box and introduced this delay. I have felt disappointed that this thing did not remain fixed as it was. I would spend three months on this before I would have such a destructive error incorporated in the foundation of this Constitution and government as a proposition to ignore the idea that equal representation is the right of our people. And I ask any man now if he will tell me what is to be the basis of representation. You have got some basis, and your people will ask you when you go home, What is the basis of representation, and what will you answer? Is it the white basis? Yes, we have got nothing black in it. It is comfortably white. Well, equal representation? No. Well, why haven't you, what is the influence? Property did not enter into it, did it? No. You don't represent according to numbers, then, and you don't make it equal? No. Then what is it that you represent? You can tell them you have got an "entity." You have found a shadow; you have represented an idea; you have used up 42 in representing an idea, then the rest of the way you went on the white basis, and there was not enough of it to make equal representation, so you just had to scatter it about. Now, that is all you can tell them. You represent the idea of a something called a county—perhaps "county sovereignty"; and you have got the Confederate counties of West Virginia to present to your people. County sovereignty! You cannot make anything else of it. I defy any man to do it. Now, I ask you if you can go before your people with such a constitution with any hope that you can ever get away from your people with the thing alive? I called upon a very intelligent gentleman from my county this morning and asked him what they would do with a constitution with anything of that sort in it. "We'll fire it back; send somebody back there to make something that will relieve us from that thing and give us what we have been fighting for all our lives." That is what they will do, and what they ought to do. The gentleman from Doddridge says he will not argue this question because the gentleman from Tyler argued it so forcibly that it is not necessary for him to argue it.

MR. STUART of Doddridge. I did not want to reiterate the argument of the gentleman from Tyler. If the gentleman will reflect a moment, he will find there is not much more argument on this question.

MR. HALL of Marion. I may have misunderstood him. I understood him as meaning that the argument had been exhausted. Well I only refer to this to see what was the ground of the argument of the gentleman from Tyler. That thing has been pressed on this body time and again and I admire the courage with which my friend from Tyler holds on to this thing. His argument is invariably, if I have understood him, to be this: that counties always have been and are entitled to be represented. That is the idea of the county, and that we can equalize this thing in the senate. Now that is just topsy-turvey. In the legislature the house is the popular branch; and when you provide a balance-wheel that balance-wheel is found in the senate. Another argument was that if the small counties did not get their delegate now they never would get it. He tells you it will be no great hardship to these larger counties with their larger fractions, because when they come up with other numbers at another apportionment they will get an additional representative. Taking those two points together the gentleman's argument amounts to this: one is a contradiction of the other, or else it amounts to an admission that he is anxious to have the small counties have a representative now, because he is satisfied they never will be entitled to it, and unless they get it now they never can get it, because if the fractions of the larger counties only have to wait until another apportionment and then could be provided for I ask if it is to be expected these small counties will ever be entitled to a representative if they could not as easily, on the same principle, be provided for as these fractions. Now, you see what is fair for one, and the same thing ought to be fair for the other.

The whole thing then resolves itself into this. Here would be some temporary seeming hardships and somebody, unfortunately, in applying this rule would have larger fractions unrepresented for the time than others. And because of that thing, then, you propose to throw away your basic principle, or modify it some in order to remove one thing, and then modify it a little more in order to get somebody else to help you; and then you will both have to get another who will benefit by such modification to help you; and then it is a scuffle for local advantage to the destruction of the rule that must necessarily be incorporated to prevent this scuffle being perpetual. Is not that about the effect of it?

MR. SOPER. Will the gentleman answer me one question? I believe he was in the convention that asked those small counties

to send a delegate here. Will he explain to me and say whether he was in favor of that representation or not? If so on what principle?

MR. HALL of Marion. I had almost forgotten that, but I will answer in a moment. We are told this is only to be for the time; that we will not incorporate it; we will never be troubled by it in the future. We will bring a right out of a wrong. I referred to the fact before that if we begin the thing on this false idea, the very precedent will be preached to us and thrown at us in all time, and you never will be able to shake it off by claiming it was an error. But now the gentleman tells us that in the former convention which was looking to this every county was permitted to have a representative. If the gentleman is well informed respecting the composition of that convention he is aware that the basis of representation was not an element in the matter at all. The committee of safety appointed by the May convention or mass-meeting called on the people of Virginia who were loyal to the United States to appoint delegates equal in number to the number of delegates and senators to which the counties and districts were entitled on the 4th day of June, and inviting such members of the house of delegates and of the senate as refused to submit to the Richmond usurpation to also take seats in that convention as delegates. That is the way the June convention, which at its August sitting provided for this Convention, was constituted. It was based on the existing laws of Virginia fixing the representation in the two houses of the general assembly. There is nothing there to support the gentleman's contention for county sovereignty any more than there is in the composition of our legislature; and it is the basis underlying one house of that body that we are fighting to get away from. If this were not true, the June convention was a body called into being to provide for a great emergency, in which any question of the nice division of representation was relatively too unimportant to be thought of. There would be a very great difference between a rule that should govern in assembling such a convention for such an emergency, when the essential thing was only that the loyal communities, wherever they might be should have a voice in its deliberations, and the rule that should govern a body entrusted with the duty of making a rule to regulate and govern the permanent legislation of the State. In the June convention, there was no question of local interests, the laying of revenues, no questions of administration such as continually arise

in a legislative body. The questions to be dealt with were temporary but they involved the safety, perhaps the existence, of the whole body of the people. We are here preparing rules and laying down principles which are to determine the details of legislation in this new State for perhaps a generation without change, and which will have all the force of established law and precedent when the time shall come to change this organic law. The rightfulness or the wrongfulness of the principles we embody in this instrument are the vital and enduring things that should appeal to our most careful and conscientious judgment.

I tell you most seriously that unless we be governed by the fundamental principle we have adopted in regard to the basis of representation; if we attempt to make a constitution here by log-rolling, by combining to accommodate every locality with an advantage to their localities, whenever you permit a proceeding of that sort, you never can and never will make a constitution that is worthy of you or such as the people demand at your hands. We must rise above that thing. I tell you solemnly I would not support such a measure though it should disfranchise my people absolutely for the next five years. I would not ignore the principle and rule necessary to preserve the principles and prosperity of the country; and I think if gentlemen would reflect but a moment, they would not.

As it regards suggestions of compromise, I am unwilling to compromise a particle of principle. I will not be in the way of taking one number or another, or to adapting the rule by any means that will occasion the least possible hardship on any part of the proposed State; but I cannot compromise the principle in one iota; and I beg that no such thought be entertained; that we will determine either that we will have equal representation or that we will not have it; and that if we are to have anything as a basis except the white population we shall appoint a committee of investigation to ascertain and report what that other thing is, that we may name it and mark it, and brand it and know it when we find it and know it is a part of the foundation of our government. When we have ascertained what our principle is to be, we have nothing in the world to do but to apply a just rule in carrying it out, and I trust we will do that without reference to any temporary or seeming local hardships or advantages. Because there can be no injustice in justice, in absolute equality. There may be seeming hardship, but it cannot be called injustice until it is unjust.

I have urged the effect of departing from our principle would have on our Constitution. I have had opportunities of knowing. Of course we cannot tell what people may do; but if there is anything that we can know, it is that the people have clamored against this very thing as the very origin, the sum total as it were, of the evils of which they have complained; and it is presumption to suppose that they will abandon the ground on which they have stood so long and so heroically and accept contentedly a reinstatement in our new State of the old servitude which they have in the past times found so grievous. We must also remember this fact, that while the Union part of our community are anxious, many secessionists are really anxious to be over here from eastern Virginia. While that has been the common sentiment of all the people of northwestern Virginia for years, it has been already claimed, a cry has gone up and we must recollect it, that when we are called on to vote on this very question there is a portion of the people in this country that are ready to oppose anything or support anything, ready to cry out against anything the Unionmen of the country are in favor of, and that no matter how much they might under other circumstances desire the very thing themselves. They will go naturally for any measure that will beat us down.

MR. STUART of Doddridge rose to say that he waived the courtesy usually accorded the mover of having the last word in the argument. He got up to move the previous question. The President said he would put the question direct, as there appeared to be no disposition to speak further.

MR. BROWN of Preston called for the yeas and nays, and they were ordered and taken, resulting as follows:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Brumfield, Dering, Dolly, Hansley, Haymond, Harrison, Hubbs, Lauck, Montague, McCutchen, Robinson, Simmons, Stephenson of Clay, Stuart of Doddridge, Soper, Taylor, Walker, Warder, Wilson —21.

NAYS—Messrs. Brown of Preston, Brooks, Battelle, Chapman, Caldwell, Dille, Hall of Marion, Hervey, Irvine, Lamb, Mahon, O'Brien, Parsons, Powell, Parker, Paxton, Pomeroy, Ruffner, Sinsel, Stevenson of Wood, Stewart of Wirt, Sheets, Trainer, Van Winkle—24.

So the amendment to the amendment was rejected.

MR. VAN WINKLE. I move we adjourn.

The motion was agreed to and the Convention adjourned.

XXIX. WEDNESDAY, JANUARY 15, 1862.

In the absence of the President, the chair was assumed by Mr. Ruffner.

Prayer by Rev. Joseph S. Pomeroy, a member of the Convention.

Reading and approval of journal.

MR. VAN WINKLE. Mr. President, I spent some hours of the night in endeavoring to carry out in a fugitive form what I suggested yesterday might be done in the nature of a compromise. I mean as a compromise between the small counties and the big counties, or with all the counties having a sufficient number to be entitled to a representative. As I suggested yesterday that the proper mode in approaching this subject would be to fix a rule to be discussed, of course, on its own merits and that could be so framed, undoubtedly, as to embrace within itself all the elements of fairness and equality that are possible. There would be, of course, as to every rule that can possibly be made in reference to a plan such as this exceptional cases where it would not operate to the entire satisfaction of those concerned. This is a truism that is constantly pressed on our attention which we know could not be obviated. Because it is hardly possible take what number you please—take 100 as the number of the house of delegates—and apply any rule that you may make strictly, there might yet be a case left, or one or two or three that would think their situation was a little more hard than the others. But the Convention would be able to consider whether really any hardship that was worth fighting much about was really perpetrated. And I apprehend that if a rule was settled while the light we have had on the difficulties to be encountered, a rule we should look to, forgetting those difficulties as far as possible, that the real cases of hardship would be very few and the hardship very light. Now, sir, this compromise is based on the idea that the larger counties shall surrender something and the smaller counties shall surrender something of their extreme demands of a representative for every county. Of course, the only idea of a compromise between conflicting interests is that both parties surrender something; and, of course, unless this is done there can be no compromise; for to attempt to make a compromise on the basis that one party shall get all and

the other nothing would be futile and would not be a compromise at all.

It has taken some thought, sir, and some figuring to find a rule that would effect this purpose, and I defined it to be departing in a slight degree from the rule that has heretofore prevailed. With a view to get a house of 54 members I take 6000, which is the divisor that would be given by a house of 50, and apply that. That leaves four members to be disposed of—well, as gratuities or in some other way. But I was anxious to get a rule that might be so framed as to apply to subsequent as well as present cases. I only, then, take 6000 as a divisor; but I did not give an additional representative for the one for that amount. I make the larger counties yield something there. I require that it shall have a fraction over 3500 in order to be entitled to an additional representative; that is, that the governing fraction shall be seven-twelfths instead of one-half.

The first rule is, then, to give to every county that has more than 6000 a delegate for 6000 and a delegate for a surplus of 3500. I then give to every larger county having less than 2500—which is as far below the half as the other is above it, and including Calhoun, for it has 2492—one delegate within 2500. I now find we have two delegates to spare and four counties left. Here is the hardship that the gentleman from Doddridge has been endeavoring to get rid of. The population of these counties—the largest being but 1700 and something—is below one-third of the ratio taken. It does not, of course, approach anything like one-half. But I think probably I will be able to satisfy the gentlemen representing here these four smallest counties by acting on a suggestion which I took from the remarks of the gentleman from Tucker last evening. That was that having been tied to Randolph for several years and having never been allowed a delegate, he thought that if Tucker could be represented occasionally by her own men that perhaps all she required would be granted. I have therefore introduced what may be a new feature, one for which I do not know that there is any precedent; but I apprehend it will commend itself to the Convention and will commend itself to the gentlemen recommending these small counties provided they understand that they cannot get each a separate representative. It is this: I give to the remaining four counties two delegates and provide that Tucker and Webster, although not contiguous—because this plan does not require that they shall be contiguous—shall each elect one delegate alternate years. Gentlemen will find that there has been a great deal of

difficulty in combining a small county with a large one, such as putting Pleasants on to Wood, for instance, because there is no other place for it to go. If another county of respectable population lay alongside of Pleasants, there could be no great objection. But so if these small counties lay contiguous—if Tucker and Webster, for instance, joined each other we could put them together. The difficulty mentioned by the gentleman from Tucker would not occur for each county would have about the same influence in the election. But I find there is a great objection not only on the part of small counties to being tacked to large ones, but objection on the part of the larger counties and injustice to them in being tacked to small counties; as for instance Randolph, which under the apportionment would be entitled fairly to a member by itself, is obliged to take Tucker in tow; Braxton is obliged to take Clay in tow; and thus in endeavoring to do some justice to these small counties you are in fact doing an injustice to both Randolph and Braxton. This plan avoids this. It simply proposes to give to the remaining four counties two delegates and provides that Tucker and Webster shall each elect one delegate alternate years, and that Clay and McDowell shall do the same; that in the year 1862 one of these counties shall elect a delegate and the other will not vote, in 1863 the other will elect a delegate and the first will not vote; and so would the other two counties which also do not lie contiguous to each other. I am satisfied that if any arrangement of districts or dividing of a representative between two counties is adopted and there is anything like equality in the population of the two that plan would be preferred by both of them I should suppose it would. I have, in order that if the Convention saw anything else worthy their approbation they might have the whole subject before them, ciphered out completely, and have proved the work so that I am very certain there is no error in the figures.

The counties coming under the first rule, to give a delegate for every 6000 and then a delegate for every 3500 gives thirty delegates. You understand I have then in another scheme set down the fractions over 6000, or the whole number where it would not give a dividend. I have then on that rule and on the second rule of giving to every county having not less than 2500 (and to Calhoun which has 2492), as I have already stated, to make out the 54 delegates with a surplus of 23,186 in the whole, a deficit of 42,753. That is to say, that there are a portion of the counties which have not enough to entitle them fully to a representative on 6000 working it out as a mere divisor there are in particular

counties—I think the relative numbers are 24 and 20—twenty have a surplus of 23,186 and twenty-four which have a joint aggregate deficit of 42,783. Now, in order to ascertain how this comes out in accordance with the fundamental principle of equality of population, I have taken the true ratio—6000 you understand is above the true ratio, the true ratio being 5637—and the result has pleased me very much. Because this being the actual number (with the exception that it ought to be 5637½—but under the rule the ½ is thrown away) but under this the surpluses are 32,048 and the deficits are 32,005, making a difference of 43, which is occasioned by the half that is thrown overboard. Now, this is the variation—if I am correct in my view of it—from a true apportionment under the general principle of equality of white population. The whole surplus, or deficit which are equal, amounts to about one-tenth of the whole number to be divided. And I apprehend that even a larger figure would not bring it out much closer than that. Now, if the Convention had an opportunity of examining these rules, which they will admit are concessions on both sides, are in the true nature of a compromise because each party here yields something in order to arrive at a conclusion that shall satisfy us all; and I certainly hope that if this rule is found to work fair under present circumstances it may be engrafted in the Constitution as a permanent rule because it would be a rule that would work with any other numbers. I do not mean to say that I have the precise proportions in this, but something in the nature of this.

Whether it would be proper for me now, in the stage of this matter before the Convention to offer this, when members have had an opportunity of seeing how it works out. I do not know, but I apprehend if we turn our attention to it and consider whether there is not as much yielded on either side as fairness and consistency would require, whether we would not be willing to take these rules and work them out and abide by the result.

MR. STUART of Doddridge. What will the result be?

MR. VAN WINKLE. Presently, sir, I will add here that there are only two counties that appear in the last column which if the division were made upon the true ratio, 5637, that have a fraction or surplus over one-half of that amount; and if the Convention could raise its ideas to 56 and give to each of these counties two additional delegates and bestow them on these two counties, I do not see that a word of complaint could issue from anybody. You see that out of all the counties that are placed together in the

report of the committee and vote in connection there are but four left and those the smallest in the lot, counties whose population is so disproportionate to the divisor, or to any divisor that you get if you enlarge the house even considerably; for as I showed yesterday if you make a house of 86 members the largest of these counties would not be entitled to a representative on the white population, and if you make one of 100 members the county of Tucker is the lowest. The county of Tucker would not be entitled to a delegate for a fraction over one-half. Because 100 members would give you a divisor of upwards of seven thousand, and Tucker is short of 1400. By this gentlemen will see how much we would have to yield to give each of these counties a delegate.

But while, sir, I am sure we invite the prosperity of these counties, that I certainly look for an increase of population in all of them and that I would be as pleased as the members representing them to hear of their prosperity, I would submit now to the members here representing those small counties whether in the face of the statements that have been made here and which they will find to be accurate, whether they do not think themselves they are asking too much if they ask for a separate delegate from each of those counties? If the Convention will bear with me—and I trust that they view as I do that it is desirable to prevent hard thoughts and such things, if a compromise cannot be reached that will be satisfactory to all. It is worth spending a little time for. If the Convention, then, will bear with me, I will give them an apportionment of the delegates under this system.

Mr. Van Winkle then read to the Convention the following scheme of the apportionment prepared by him:

Counties	White Population	Quotients	Fractions	Delegates	Ratio of 6000 Surplus	Ratio of 6000 Deficit	True Ratio 5637 Surplus	True Ratio 5637 Deficit
Barbour	8,729	1	2,729	1	2,729		3,092	
Braxton	4,885	0	4,885	1		1,115		752
Boone	4,681	0	4,681	1		1,319		956
Brooke	5,425	0	5,425	1		575		212
Cabell	7,691	1	1,691	1	1,691		2,054	
Calhoun	2,492	0	2,492	1		3,508		3,145
Clay	1,761	0	1,761	½		1,239		1,057
Doddridge	5,168	0	5,168	1		832		469
Fayette	5,716	0	5,716	1		284	79	
Greenbrier	10,499	1	4,499	2		1,501		775
Gilmer	3,685	0	3,685	1		2,315		1,952
Hancock	4,442	0	4,442	1		1,558		1,195

Counties	White Population	Quotients	Fractions	Delegates	Ratio of 6000 Surplus	Ratio of 6000 Deficit	True Ratio 5637 Surplus	True Ratio 5637 Deficit
Harrison	13,185	2	1,185	2	1,185		1,911	
Jackson	8,240	1	2,240	1	2,240		2,603	
Kanawha	13,787	2	1,787	2	1,787		2,513	
Lewis	7,736	1	1,736	1	1,736		2,099	
Logan	4,789	0	4,789	1		1,211		848
Marion	12,656	2	656	2	656		1,382	
Marshall	12,936	2	936	2	936		1,662	
Mason	8,752	1	2,752	1	2,752		3,115	
McDowell	1,535	0	1,535	½		1,465		1,283
Mercer	6,428	1	428	1	428		791	
Monongalia	12,907	2	907	2	907		1,633	
Monroe	9,526	1	3,526	2		2,474		1,748
Nicholas	4,470	0	4,470	1		1,530		1,167
Ohio	22,196	3	4,196	4		1,804		352
Pleasants	2,926	0	2,926	1		3,074		2,711
Preston	13,183	2	1,183	2	1,183		1,909	
Pocahontas	3,686	0	3,686	1		2,314		1,951
Putnam	5,708	0	5,708	1		292	71	
Raleigh	3,291	0	3,291	1		2,709		2,346
Randolph	4,793	0	4,793	1		1,207		844
Ritchie	6,809	1	809	1	809		1,172	
Roane	5,309	0	5,309	1		691		328
Taylor	7,300	1	1,300	1	1,300		1,663	
Tyler	6,488	1	488	1	488		851	
Tucker	1,396	0	1,396	½		1,604		1,422
Upshur	7,064	1	1,064	1	1,064		1,427	
Wayne	6,604	1	604	1	604		967	
Wetzel	6,691	1	691	1	691		1,054	
Webster	1,552	0	1,552	½		1,448		1,266
Wirt	3,728	0	3,728	1		2,272		1,909
Wood	10,791	1	4,791	2		1,209		483
Wyoming	2,797	0	2,797	1		3,203		2,840
Total	304,433	30	124,433	54	23,186	42,753	32,048	32,005

1. Give to every county having over 6,000 white population one delegate for every 6,000, and one for a surplus of 3,500.

2. Give to every other county having not less than 2,500, and to Calhoun county, one delegate.

3. Give to the remaining four counties two delegates, and provide that Tucker and Webster shall each elect one delegate in alternate years, and that Clay and McDowell shall do the same.

MR. VAN WINKLE, resuming. Now, the two counties here having the lowest fraction over the half of the actual ratio of 5637 are Barbour and Mason, one in the northeast, the other in the

southwest; and if those who are looking to a balancing of the different sections of the new State, here is an opportunity, if the Convention would be a little generous to add two members, by giving each of those counties an additional delegate which would fairly balance one another in sectional interest that might arise. But then I think that very matter would be stopped. I do not know where the case of hardship could be picked out.

Now as to the number 54 or the number 56 I do not think that a house would be properly constituted of a less number. In my original calculations for the 39 counties before I came to Wheeling or before the Convention sat some few days, I was trying to see how the representation could be apportioned among the 39 counties, of which the State, as far as I knew then, could consist; and I never thought of taking a less number than 55 as the number of the house of delegates. It appeared to me, from the best reflection I could give the subject at that time, free, of course, from the influence of any arguments or suggestion made here, that with a less number the business could hardly be done. I have already alluded to the difficulty that is now experienced. My friend from Doddridge has, I think, very experimental evidence of it. The senate is composed of only ten members. The senate is composed of ten members. I do not know that there are so many and how it can get on with fifteen or twenty standing committees. How can they possibly do that business? Again, the house of delegates that is at present constituted has 39 members. There the same difficulty occurs. Members have to be doubled and trebled and quadrupled on the committees, or else you must take committees so small that the practical idea of a legislative committee is defeated. Because if you will remember in the constitution of committees in this body the endeavor was to scatter the members of the committees all over the State. The reason was this, that in the committees, as in the Convention, every shade of opinion would be represented: With committees laboring in that way the difficulties would be presented, the hardships would be suggested; and a committee, a small body, debating these propositions in a conversational way would be able to hit on some compromise and obviate objections that would be raised in committee. The result is, as we have very plainly seen, we have in most cases adhered to the action of the committees. Frequently, when alterations are proposed we get back to the result of the committee's labors; and I may say without offense that it is necessarily so, because the committees are peculiarly calculated for that business, and hence we

have any peculiar abilities they have devoted to that subject. That, of course, would aid us very much, because the committee is so constituted that it represents every part of the State and no objection to a measure reported on is likely to arise in the Convention if it has not arisen in the committee. There the question is canvassed and frequently a gentleman suggests an amendment and he is told by some member of the committee what its operation would be which he had not foreseen but which the committee had been forced to look into. Now, the importance of committees of suitable size is illustrated sufficiently I think by these remarks.

Well, again, these small bodies are much more likely to be operated upon by outside influences than the larger body. That is palpable to every one. Up to a certain number the despatch of business is greater than in a body that is somewhat numerous than in a smaller body. I know this very well. I know business is driven ahead in the legislature at Richmond much more rapidly than you can get it ahead in a town council of 15 or 20 members. And also because with the greater number you are more likely to get a fair proportion of experienced men acquainted with such business—and that is a great deal. When we come to business of this kind, if we are not familiar with the mode of conducting it we are meeting with the difficulties all the time until we get the rough corners worn off.

I am arguing now simply against the objections that have been made against a large house. I apprehend if those advantages do attend it, the difference of pay ought not to be a consideration here. True economy does not consist in putting money away in an old stocking but in the judicious expenditure of it, and if we can so use our money as to receive for it more than money's worth, we are certainly exercising very judicious economy. I believe I will leave it to the Convention to indicate what course they think had better be taken with this, if there is anything in it that strikes them favorably. It might be laid on the table and printed, or they can take such other action as they please. I have worked it out with a sincere desire to heal differences of opinion and satisfy everybody. I think it will be found that in the distribution of power I have not aggrandized my section nor on the other hand the extreme southern section of the State.

MR. HAYMOND. I am with the gentleman from Wood. Fifty-six is the number which I first offered, but on reflection I changed it to 59. That number I still think the best; but I am for the compromise. I am with the gentleman from Wood.

THE PRESIDENT. Does the gentleman from Wood make any present motion?

MR. VAN WINKLE. As it is a proposition of my own, I do not want to compel the members to be for it. They might take any course they see fit. I have given the necessary labor to it, as I have already stated, with a desire that it might effect a compromise; and if members are desirous to settle it on the compromise basis, that may be the beginning, at any rate, of a proper scheme. I think it will be found as unobjectionable as any that could be proposed. For I do not take the figures at random. I considered well what would be a proper yielding on each side. Of the 13 or 14 counties that were put in pairs in delegate districts there are but four left and of six delegate districts there are but two; and if the proposed arrangement shall be satisfactory to the delegates from those counties, they need not, of course, be contiguous, and difficulty of that kind is avoided. The feature giving to counties in alternate years I think is one that might be engrafted on any proposition, and if I represented a small county I certainly should be in favor of it if I could not get the whole representative.

THE PRESIDENT. It is proper that some motion should be made in reference to the proposition; otherwise it will be passed over.

MR. LAMB. I certainly am not prepared to act on the proposition of the gentleman from Wood. It is entirely a new one to me, and in order to consider it at all the only course is to lay it on the table and print it, and then adjourn the discussion of the apportionment of the house of delegates until we receive the printed copies and look into it carefully. I make no proposition of the kind, but if the gentleman from Wood wishes the matter to take that course I will cheerfully acquiesce, for one. There are many considerations connected with the matter, but for a proper consideration of this entirely new scheme the house must take some time and must have the scheme regularly before it. I could not consider a scheme with figures of that kind explained verbally here before us. I could not consider the principles that are involved in the measure here without some time to think over and examine them. To me it is an entirely new plan; and certainly whatever plan is proposed and recommended by the gentleman from Wood the Convention will be disposed to give all proper weight—perhaps more than a plan proposed by any other member—to his

recommendations. But I, for one, would want time to consider and investigate the plan that is now presented.

MR. SINSEL. Mr. President, it seems to me we are about as well prepared now to discuss the question before the Convention as we will be at any future day. We have been contending here for principle upon the basis of representation.

THE PRESIDENT. It is not regular to proceed with this debate without some motion on which the Convention can act. If the gentleman proposes a motion, let him indicate it, and the house will then understand what we are about.

MR. SINSEL. I merely wanted to state that that plan is equally as arbitrary as the one suggested by the gentleman from Doddridge.

MR. STEVENSON of Wood. Mr. President, I will just state that if it is necessary to bring the matter properly before the Convention I will move that the proposition of my colleague be printed, and also any other propositions that may be presented, and that the subject be passed by for the present. If it is thought better to make it a special order, some other gentleman can suggest that. I make that motion to bring the matter before the Convention.

MR. DERING. I approve of the motion the gentleman has just made and am in favor of having the proposition printed and laid before the members. I hail the proposition, sir, for a compromise on this question with pleasure; and while I do not indicate what my view will be on the subject, yet I wish to give it a fair examination. I wish to entertain it and give it all that consideration which it deserves. Sir, I differ with my friend from Marion who is opposed to all compromises. If we all acted on that principle, sir, we would never make a constitution in the world.

MR. HAYMOND. Will the gentleman from Monongalia excuse me?

MR. DERING. Your colleague, Mr. Hall.

MR. HAYMOND. Very well.

MR. DERING. All constitutions have been matters of compromise; even the Constitution of the United States was. Every constitution we have had in this state has been a matter of compromise, and the greatest men in the land have set us the example of compromising when members could not agree.

THE PRESIDENT. I would remark to the gentleman that this debate is entirely out of order.

MR. STEVENSON of Wood. I made a motion.

THE PRESIDENT. The proposition is to pass by the consideration of the question.

MR. STUART of Doddridge. I would suggest to the Chair that that proposition cannot be made while another member is entitled to the floor.

MR. STEVENSON of Wood. I made that motion distinctly before the gentleman got up.

MR. DERING. I am speaking to the motion of the gentleman from Wood, who moves to have the proposition printed and laid aside. In order to have that done I am speaking of the necessity of doing it by way of entering into this compromise and showing the necessity of laying that proposition before the Convention so that it can be understood and that members may have time to consider it.

THE PRESIDENT. The printing has been considered a matter of course in all propositions before the house and it is not subject to debate the rule.

MR. BATTELLE. If the Convention please, I would suggest a modification of the motion of the gentleman from Wood that instead of a motion to print the proposition of his colleague he move to pass by the subject for the present and refer the proposition to the Committee on the Legislative Department, together with all other propositions on that subject, and that they report to the Convention as speedily as practicable the result of their investigation on the subject. I make this suggestion without knowing who are the members of that committee except the gentleman from Ohio (Mr. Lamb). But as they have had the whole subject under consideration and are familiar with it, it seems to me it would expedite business to recommit the matter to the committee and let them make their report, and let that report be printed. The Convention will have the assurance then that the best effort and labor have been given to the whole question. I suggest that modification of the gentleman's motion.

MR. HERVEY. I hope this paper will not take that course, sir. That committee has been at work and we have the result of their

labors. I take it that is their opinion. There is no mistake about that. Besides, it would involve delay, and I think the course indicated by the gentleman from Wood to lay on the table and print will bring the whole question before the Convention sooner, within twenty-four hours, and consequently no material delay would occur.

THE PRESIDENT. Does the gentleman from Ohio make a motion?

MR. BATTELLE. I move an amendment to the motion of the gentleman from Wood, that the proposition to which his motion relates be referred to the Committee on the Legislative Department with instructions to report as speedily as possible, of course including the idea that the subject be passed by.

MR. HALL of Mason. I would be glad to see the subject take the course suggested by the member from Ohio. The question has been a very vexed one, and I do believe if the committee had the subject again before them they would be able to give us such a report as would give satisfaction to the Convention. I hope it will be the pleasure of the house to adopt the suggestion of the gentleman from Ohio.

MR. STUART of Doddridge. I desire to make one suggestion, that I think the Convention is prepared to act on this question. With the light thrown on it by the gentleman from Wood, I am prepared, for one. I am opposed to extending this thing any further. If we send it before the committee it will return and we shall be refreshed and have this debate to go over again.

MR. STEVENSON of Wood. I wish to make just a single remark, sir, and that is this that I hope the motion to pass by at least for the present will prevail. It may possibly be better to fix the business as a special order for Monday or some other day. About that I am not particular; but if it is possible to devise a plan by which the conflicting opinions and apparently conflicting interests can be reconciled in this matter it certainly is still worth while to postpone for a day or a few days. If we go to act on this matter now I must say, for one, although I am not very good at figuring that I am not prepared myself, and it would require a good deal of discussion to convince me that any proposition which can be offered—any new one—will reconcile the differences better than some we have already had before the Convention. But if it is possible—and I must confess the proposition suggested by my col-

league appears to be one of that kind; it may not be; it appears to be—but if it is, why, sir, it does seem to me that ordinary common-sense would dictate that we should adopt it; and to adopt it intelligently we must have time to read it, to make calculations and have a little while at least to talk about it. I think for these reasons it would be better to postpone for the present and take it up either tomorrow or next day, or sooner or later as the case may be.

MR. LAMB. As to the question of delay, which is a material one on the consideration of the precise motion before the Convention, I may remark we have plenty of other business we can go to work on. There are plenty of propositions pending before the Convention. There are a number of sections of this legislative report not yet acted on entirely disconnected with the question of apportionment; the executive report; the judicial, county and township organization reports are all lying upon our table. The motion does not, therefore, involve the necessity for any delay. It may occasion delay in the manner suggested by the gentleman from Doddridge. We may come back refreshed on this subject. We are now all tired. We may come back prepared to make further speeches all round on the subject. There is a possibility that that may be the result. But we would at least go into the consideration of the subject with all the light that has been thrown on it by the discussions that have already taken place—and I trust there has been some light thrown on this subject of apportionment.

MR. BATTELLE. I wish to say one word in reference to this question of delay. It does seem to me that if the Convention should take the course suggested in reference to this proposition, instead of being a time-consuming agency it would be most effectually and emphatically a time-saving measure. I cannot understand the views of gentlemen who think it is indispensable to save time, that when we get a particular thing before us we must do it or must right or wrong go through it before we look at anything else. It seems to me from the result of my limited observation such a course is unusual in any other deliberative bodies with which I am acquainted. And I must say, for one, what has already been said, that if compelled to vote on the proposition submitted by the gentleman from Wood—which may be very excellent—I shall have to "go it blind" for one. I really am not able to say whether I ought to vote for it or not; and on a question involving such grave consequences I, for one, want to see it in print; and I especially desire

that it shall pass the ordeal of the committee which this Convention has ordered or appointed and which, judging from the result of their labors heretofore we have a right to have confidence in. I make that remark without knowing who are the members of that committee save and except the chairman. I hope it may be the pleasure of the Convention to give this proposition that direction.

The question was put on Mr. Battelle's motion to refer to the committee, and the motion was agreed to, as announced by the Chair.

Some members expressed dissatisfaction on the ground that they did not understand what was the question voted on. Mr. Battelle and Mr. Lamb rose to explain.

MR. STEVENSON of Wood. My motion is to print and pass by for the present. The motion to refer to the committee is an amendment proposed by the gentleman from Ohio. The first vote will be whether the proposition introduced by the member from Wood (my colleague) shall be referred to the Committee on the Legislative Department; and then if that is carried, it will be on my motion as amended.

The question on Mr. Battelle's amendment was taken again by ayes and noes and resulted: Ayes 21, Noes 13. So the amendment was agreed to.

MR. STEVENSON of Wood. Mr. President, I think the members of the Convention will agree that I am not very captious, but certainly the Convention did not vote understandingly on that motion. I voted for the amendment of the gentleman from Ohio when I intended to vote against it because the motion was put as I understood by the gentleman in the chair that all who favored my motion should rise.

MR. STUART of Doddridge. I understand. I voted for the motion of the gentleman from Ohio; and then the proposition recurs: will we adopt your motion as amended?

MR. STEVENSON of Wood. The question put from the chair when the last vote was taken was: "All in favor of the amendment of the gentleman from Wood as amended will rise." I got up and voted for that. But certainly it was not understood that we had voted before on the motion of the gentleman from Ohio.

THE PRESIDENT. The Chair would remark to the gentleman from Wood that really there was possibly a mistake in the votes

but it makes very little difference with the question as it stands. The object of the gentleman from Wood in the delay and the printing is effected in this case. Both the gentlemen have effected their purpose. The only difference is that if the gentleman is opposed to the reference to the committee, that has carried. The only difference between the condition it now stands in and the adoption of the motion of the gentleman from Wood, is that it is carried to the committee, a little further than he desires. If the gentleman desires to reconsider, any person in that way can move to reconsider and the motion will be put.

MR. STUART of Doddridge. I understand the gentleman from Wood submitted a motion. The gentleman from Ohio moved an amendment to that; that amendment has been adopted, and the question is now on the motion of the gentleman from Wood as amended.

MR. STEVENSON of Wood. The only difficulty is I did not understand that it was amended. Of course, I am not particular about it, only I think if the Convention did not desire that the paper should go back to the committee that they should have a chance of saying so.

MR. BATTELLE. I myself understood with the gentleman from Wood that two votes were taken on this proposition, first on the amendment and then on the proposition as amended. There has been but one vote taken. My amendment was a distinct proposition, and though I am personally very well satisfied with the result yet I must say in common fairness, with every deference to the Chair, it does seem to me the gentleman from Wood has a right to demand that a vote should be taken on the amendment and then on the resolution as amended, provided it was amended.

THE PRESIDENT. The Chair understood the vote as taken on the amendment. It is true some of the members did not so understand it. The second vote was on the adoption of the proposition as amended.

The gentleman from Ohio.

MR. LAMB. I understand the matter precisely as the Chair does. The first vote was on the motion of my colleague from Ohio to amend the motion of the gentleman from Wood. That vote carried. The second vote was put on the passage of the motion of the gentleman from Wood as amended and that vote carried.

It is clear that there is a misunderstanding in this matter. The gentleman from Doddridge, who voted for the last motion, did not suppose they were voting for the motion of the gentleman from Wood as amended. The gentleman from Ohio, who made the motion to amend did not suppose the amended motion was carried, as I did. For the purpose then, as a mere matter of fairness all round, I move the reconsideration of the vote, having voted in the affirmative in both cases. I move the reconsideration of those votes, and then I must insist that the gentleman from Wood put his motion in writing and my colleague from Ohio put his amendment in writing, and we will then know what we are voting on.

MR. BROWN of Kanawha. If the gentleman have attained the object in view, are they not content with it. Under the rule, if it is carried to the committee . . .

MR. STEVENSON of Wood. I am perfectly satisfied to let the thing rest. I only want to have it straightened out properly.

MR. LAMB. I have no objection to withdraw the motion; but is the gentleman from Doddridge satisfied?

MR. STUART of Doddridge. I voted under a misapprehension; but I am content to let the matter rest as it is.

MR. LAMB. Then by general consent the matter may rest.

MR. CALDWELL. In my view, it would be better to recommit the whole report to that legislative committee.

MR. BATTELLE. There is where it goes.

MR. CALDWELL. I understand it is proposed to refer the proposition of the gentleman from Wood. My proposition is to refer the whole report and the proposition of the gentleman from Wood will then go with all the propositions that have been offered. I make the suggestion, sir, with a view that the proposition of the gentleman from Wood and that of the gentleman from Ohio, and the one I made myself, may have the opportunity of being investigated by this committee previous to being acted on by the Convention. I think the object of the Convention would be better obtained by recommitting the whole report to the committee. I am aware I cannot make that motion therefore I merely make the suggestion.

MR. VAN WINKLE. If I understand this motion it recommits only so much of the report as relates to the apportionment of the house of delegates. It leaves the report before us for further action, and we can proceed to the senate. Well, difference of opinion is going to arise there; and it may be that settling the provisions in reference to representation in the senate may make the other less difficult to settle. We will have, at any rate, until the day this report comes back; we will have had a discussion on the senate apportionment, and I think we will be better able to decide. I think, therefore, sir, there is no necessity for recommitting the whole report. The gentleman speaks of his proposition, which relates to something entirely different from the apportionment of delegates in either house. He could have that separately committed to the committee if it has never been there if he should desire to do so. It is the proposition offered here since the report was before the house, and has been printed. But it is not best to recommit the whole report because that would preclude us from considering the representation in the senate, which would perhaps throw light on the representation in the house.

MR. CALDWELL. I withdraw any suggestions I have made.

THE PRESIDENT. The Chair would remark that the gentleman from the county of Logan is here, ready to come in and qualify.

Benjamin H. Smith, of Charleston, Virginia, being present in the chamber, then came forward and the Secretary administered to him the oath embraced in the ordinance for the reorganization of the state government, and Mr. Smith took his seat in the Convention.

MR. BROWN of Kanawha. I was not in favor of referring this portion of the section of the report back to the committee, as has been done; and it strikes me now as very highly proper that the subject of apportionment in both houses should be referred together. For us to attempt to conduct a discussion in reference to the apportionment of the senate while the same subject is under consideration before the committee with reference to the house deprives us of the advantage of surveying the whole field and by it determining our course.

It seems to me it is highly proper the committee that is disposing of it in the one should dispose of it in the whole. And it arises from this fact: that if it be found impossible to do complete justice to all parts in the one house there may be a compensation

for it in the other. I therefore shall favor the reference of the subject as to both houses to the committee, with all the competing propositions that they may have the whole under consideration. I object to the proposition of the gentleman from Marshall, to refer the whole report, because a large part of it has been adopted and if the whole report is recommitted it subjects the whole again to re-amendment and consideration, and is in fact undoing all we have done, whether well or ill. But the subject of apportionment is one subject in fact, whether in the house or senate, because it is the same people in either case who are clamoring for equal and proper representation.

MR. POMEROY. Would my friend be willing that the whole of the report that has not been acted on should be referred?

MR. BROWN of Kanawha. I am perfectly willing for that.

MR. SINSEL. We acted on the apportionment in the senate and decided on that. There was a minority report considered at the same time and refused, and the majority report adopted.

THE PRESIDENT. There is no vote before the Convention.

MR. BROWN of Kanawha. Then I move to refer the subject of apportionment in both houses to the Committee on the Legislative Department.

MR. PAXTON. What is the motion?

THE PRESIDENT. The motion is to refer the whole subject of the basis of representation back to the committee.

MR. PAXTON. I shall be opposed to referring back to the committee what we have already decided upon.

MR. POMEROY. The motion if I understand it is this: to refer to the committee for to bring in such report as they see proper for the house of delegates; and the motion now is to recommit also in regard to the senate. And also the gentleman from Kanawha accepted the suggestion I made to refer all that portion of the report that has not been acted upon back to that committee. I made that suggestion because there were so few sections of that report that have not been acted on that it will only lead to confusion, only to commence back where we left off and on the lower house first. I can not vote intelligently on how the senate is to be composed until the house is decided on. There should certainly be some fair pro-

portion between the two branches of the legislative department; and I think we will go on more rapidly to refer all back that has not been acted on and let the committee report on just such portions as they think need to be reported on, and we will take up some other report that is before us and will go on with the business before us.

MR. HERVEY. I think there is great force in the remarks of the gentleman. The senate must depend greatly on the number of the house and *vice versa*. Consequently until all the propositions are before the house it cannot be prepared to act; and if they are not prepared to act on the one branch I cannot see that we can come to any just conclusions in regard to the other; and it would be therefore proper and right to pass by this report.

MR. POWELL. Mr. President, if I understand the proposition it is to refer the apportionment of both the senate and house back to the committee. We have already declared that matter, as it respects the senate by adopting the 4th section of this report. I am opposed to the motion.

MR. VAN WINKLE. Mr. President, I do not see what there is novel in reference to the senate to go back to the committee. There is the proposition of the gentleman from Brooke in reference to single districts, which is the only matter I know of. The committee will have nothing before them more than they did before. Nor do I see anything to prevent us going on and considering the apportionment of the senate. It may be, as the gentleman from Hancock has said, there ought to be some proportion between the senate and house; but it is not important, even in that view. The numbers to which the house must be restricted are tolerably well known, and that notation will, of course, be used whilst we are considering the senate. I do not see any necessity of reconsidering that part of the report, or any other part except what relates to the house of delegates. But until we consider the senate a little we do not know that it needs any separate action of the committee. Unless they should report back the proposition of the gentleman from Brooke, there is nothing I see they would be likely to do. We have in the minority report an apportionment of single and double districts different from that of the committee; but it is regularly before the house also, and I shall therefore be opposed to reconsidering what relates to the senate. I think we can go on with it and spend some time profitably on it.

The question was taken on Mr. Brown's motion to recommit

the whole subject of apportionment in both branches of the legislature, and the motion was agreed to.

MR. LAMB. Mr. President, the next subject in order, then, I suppose is the 9th section of the report of the committee on the Legislative Department. That was passed by on the 19th of December.

MR. VAN WINKLE. It was passed by because there is a similar provision in the report on county organization, where I think it perhaps more properly belongs, and is there connected with a similar provision in reference to townships. The provision in reference to counties is about the same only in different language; but I apprehend it is more proper to consider it in connection with that report.

MR. LAMB. I really suppose it is a matter perfectly immaterial whether it is considered with one report or the other, and for this reason that we all understand that whatever provisions the Convention will adopt on first going over the different reports in relation to matters coming from the standing committees, when they come into the hands of the Committee on Revision they are expected to put each in its proper place in connection with the subjects to which they properly belong. If the gentleman from Wood prefers that this subject should not be considered until his report comes up, I have no objection to it at all—no objection to pass it by again. But it strikes me that in considering a provision of the kind the question whether it properly belongs to this report or not should have no influence one way or the other. Because that is a question that cannot be properly decided until all the resolutions adopted by this Convention come into the hands of the Committee on Revision. They may later find it necessary to change the arrangement of matter as originally reported.

MR. BROWN of Kanawha. I see no objections to considering this question at once. It is the same question whether introduced by one committee or another. It can have no effect or influence whence it comes. The simple fact is its being here and the propriety of adopting or rejecting. My opinion is that it does properly belong to that subject of county organization; but that has nothing to do with its adoption or rejection. And I am in favor of proceeding at once to the consideration of the subject. I do not know that it requires any motion to do so. The only objection that could be raised against it would be whether the placing of it properly be-

longs to the Committee on Revision. Placing it here, it seems out of place. If that is to operate as a constraint on the legislature while the proper subject is determining what shall and what shall not constitute a new county. Here it looks same as a limitation on the legislature, and they may regard or disregard it as they choose. When they disregard it, the county would have its existence. We are where the legislature heretofore have paid little regard to this subject, have made counties without the requisite area or population. It seems to me it more properly belongs to the subject of county organization.

MR. VAN WINKLE. I withdraw the objection, sir; the two provisions are almost identical.

Well, sir, I move the adoption of the section. The section on new counties.

MR. HERVEY. Mr. President, it strikes me the area as proposed is too large. It provides that no county shall be formed with an area of less than 450 square miles. Now, sir, if each new county be formed under this provision, say exactly 21 miles square, it will make 441 square miles. Now, it is not very likely that as large a district as this can be chalked out which will be exactly square. It may be diagonal or oblong, weaving in or weaving out; and in order to comply with this constitutional provision it might occur that a county might perhaps be 40 miles long and twenty wide. I then move to strike out the words "four hundred and fifty" in the 86th line and insert "three hundred and fifty."

THE PRESIDENT. The question is on the adoption of the amendment.

MR. LAMB. Mr. President, it is a very hard matter to determine upon any principle I know of what ought to be the exact dimensions of a county. In fixing the number at "450" we have been governed by the considerations which I will mention. I have taken some pains to ascertain upon the most accurate information which I could obtain the dimensions of the new State—forty-four counties. Upon the best authority upon that subject I made the dimensions 21,300 square miles. Dividing that number by forty-four gives the average number of each county 480 square miles. The provision that is reported by the committee is substantially this, that no county shall be diminished materially below the dimensions of the present counties. The present ones, taking one with another, average 480, and we have proposed 450. There is in

the constitutions of the different states a variety of provisions in regard to this matter. You will find a variety of numbers. The Constitution of Virginia, you are aware, has fixed it at 600 square miles—the present Constitution—below which counties are not to be formed. The Constitution of Ohio fixes it at 400 square miles. But look at the population of Ohio compared with the population of West Virginia. A county of four hundred square miles across the river is a much larger county in the essentials of a county, population, wealth, etc., than 450 on this side. The Constitution of Missouri says 500; Louisiana 625, Mississippi 576. Of all the states none goes below 400, so far as my memory goes, except the State of Tennessee, which has the number suggested by the member from Brooke, 350 as the limit. I do not know how we are to exactly determine what is the precise area of territory that ought to constitute a county; and it is a matter perhaps of no great importance whether we fix it one way or the other. I merely wanted to state to the Convention that in fixing it at 450 we had considered the best lights we had before us.

MR. VAN WINKLE. Mr. President, I am in favor of this section, as reported. I believe every word of it. I think from the discussions that we have had the past few days, if there was any one fact more apparent than another it is that the legislature does need to be restrained by a constitutional provision in reference to this erection of new counties. The whole difficulty, I may say—indeed, I believe I may say—the whole difficulty that we have had in reference to the apportionment of the house of delegates has arisen out of improvident legislation on the subject of new counties, in erecting counties without sufficient population. I think the most of them have sufficient territory, but in respect to numbers some of them are vastly too small. The Committee on County Organization, acting separately and independently from the Committee on the Legislative Department, so far as I know without any consultation between the members, have arrived at precisely the same conclusion as to the size of the counties, and possibly it may be upon the same grounds. Both reports independently made, fix the number of square miles which the counties are to contain at 450, the minimum; and the remarks of the gentleman from Ohio based on these statistics, which he is always prepared to exhibit to us, show that 450 is below the average of the present counties in the state. Territorially our counties in the new State, looking at them on the map are very nearly equal, perhaps as nearly as could

be expected in point of territory, with few exceptions; and it is a very good indication to us as the to the size to which to conform ourselves to what the real wants of the people seem heretofore to have required. If 480 is their average, 450 is safe for us to fix as a minimum; not to tie them to the precise average but to give them a little play above and below. I beg to call to the consideration of the Convention something that is in the future but will explain the reason why I thought—not because it would be reported by the committee of which I was chairman, but the reason why I think this subject would come up more properly in connection with the report on county organization. If the system of dividing the counties into townships is carried out—and that or something very similar to it must necessarily be if I understand the views of members of the Convention—this necessity or desire for new counties will be relieved by a better system of organization to take care of the county business. If we make a suitable township system, the people will find that many matters that have heretofore drawn them to the court house will be transacted at home. This would obviate the necessity—or would have obviated the necessity before, if it had prevailed, as proposed by Mr. Jefferson. Thirty years ago, or somewheres about ten years ago, if it had been incorporated in our Constitution, it would have prevented the cutting up of our counties into such small divisions. Our counties here are about the size of some townships in New England, while their counties embrace several such and each one of them is more populous in numbers than our counties. You go back to the inconvenience if you make your townships too large; but by the rule which the Convention will be asked to adopt in reference to the size of townships, the business if transacted in town meeting in their townships, every one will find that the necessity of going to the court house as often as heretofore necessary will have ceased. If then we can anticipate—as I think and hope we can—that the township system or something similar will be adopted, it would reconcile us certainly to leaving the minimum counties at what the committees have fixed them. The gentleman who offered the amendment tells us that 21 by 21 would give 441 but that even that is too large. I think there are very few counties that have not one line at least over twenty miles; or otherwise they lie compactly or squarely, so that their territory perhaps may be somewhat less than this area. But if fixing for the future, looking on the map, ascertaining the area of any county we are familiar with, you will find this comes very near to the average of most of the

counties. The county that was reduced to twenty-one miles in each direction would be small enough at least. I do not understand the gentleman's remarks precisely. A county, it is true, may be stretched out for 45 miles and have but ten miles breadth and still have 450 square miles; but the people in applying for a new county would avoid stretching it out that way, because compactness of territory, which I believe is alluded to here is also to be observed. At any rate the wishes and interests of all concerned would induce them to preserve it.

If these things be taken into consideration we shall find that 450 is small enough. This would make a very convenient county, even if we had to go to the court house; and with our sparse population, less than that number of miles would not in many districts contain the population entitled to one-half a representative. I think this is a safeguard against the evils we are now experiencing and will be a sufficient safe-guard if engrafted in the Constitution as it stands here. It will prevent the creation of any more of these counties of very small population and prevent the cutting up of counties from motives that will not always bear examination and making them much smaller than there can be any real occasion for.

MR. HALL of Marion. I do not understand the amendment.

THE PRESIDENT. The amendment is to strike out 450 and insert 350.

MR. HALL of Marion. With reference to miles, not numbers?

THE PRESIDENT. Square miles.

MR. HALL of Marion. Mr. President, I move to amend the amendment by striking out all contained in the section having reference to the square miles or to the amount of area required. I presume every member of this body by this time has fully realized —those of us who live in large and those in smaller counties can well see things that can arise from unnecessary cutting up of counties and forming new ones irrespective of population; but really I am unable to see what propriety or necessity there is or what benefit can be derived from a restriction as to territory if you have a sufficient amount of population. You may have even a very small territory, if you have the population; and it might be to the interest not only of that territory but of the adjacent territory, which under the proposed rule would be necessarily connected with and be part

of that county. I say I can see very well how it may even happen; and no doubt you will very often find that it would be desirable on the part of all and injurious to none that you should not, when you have the population be restricted in territory. We have heard a great deal in this discussion about this very thing: that we form a part and parcel of a county, and the principal weight of the county is in some one section and they ignore the rest of us. Well, this county could be large enough to form, so far as population is concerned, to form two or three counties. I see no necessity for restricting them if the people in the proposed new county are willing to be at the expense of making their public buildings, carry on their county organization. Why should we restrain them in this matter. We ought to leave them free to act so that if there is any inequality in this matter they may be relieved from it. For example, suppose you have counties which under the rule of territory you propose shall not be lessened so situated that it cannot be formed into other counties. Yet this county may contain population to entitle it to say three representatives, and the power of that county may be at one corner, and the other part of it may suffer great injustice. If there be force in the arguments used here on another question, no good can arise out of this; it is a matter for their own consideration. There is no necessity for a constitutional restriction beyond some kind that may be thought necessary to require a judicious number of inhabitants to be in the territory of the new county before it will be formed and to remain in the counties out of which it shall be formed. There ought to be a rule in that respect.

I therefore move to strike out all that part of the section 9 down to and including the 89th line.

It does occur to me that the argument of the gentleman from Wood only applies with reference to population and not with reference to area. If you attempt to place this restriction on the people it occurs to me no benefit can grow out of it and hardships may result from it; and we ought to leave that to the will of the people and to legislation. When we restrict them in reference to population we protect ourselves. I hope it may be the pleasure of the Convention to adopt the amendment to the amendment.

MR. VAN WINKLE. I object to the amendment because it is not congruous and cannot possibly be forced on the amendment of the gentleman from Brooke. We can let this be disposed of, and then the gentleman from Marion can offer his.

MR. HALL of Marion. It would be competent to offer it as a substitute for the amendment.

THE PRESIDENT. The Chair has thought on that subject while the discussion was going on, and it does seem to me that the amendment to the amendment would be in order, for this reason: that is proposes to do all that can be done by the amendment and a great deal more. It would dispose of the whole question. However, the Chair has but little doubt that the suggestion of the gentleman from Wood is good, that it is better to let the amendment of the gentleman from Brooke be first disposed of and then take action on the larger proposition.

MR. VAN WINKLE. That is certainly parliamentary etiquette. Let a thing be prefected before you move to strike it out as a whole. Let the friends of a measure make it as perfect as possible, and then your motion come in afterwards. In the present attitude of the proposition it confuses debate.

MR. HALL of Marion. I will withdraw it and offer it afterwards.

MR. BROWN of Kanawha. I will not discuss the proposition of the gentleman who has just withdrawn it. In reference to the amendment proposed, I would say that I have no particular objection to the precise number of square miles he has suggested except the fact that he has still diminished, and I think the number fixed by the committee is sufficiently small. I think in looking over the map of our country and noting the size of the counties and then taking the average size and to reduce it below that average (480) will be creating a difficulty that we have experienced and will continue to, that generally start up all over the county. It will be a sort of election hobby to make a new county. The misfortune is that gentlemen look at the present without regarding consequences; and then you have a small county, with small lines, taxed with a separate organization, public buildings, courts and all expense attendant on a county organization. I think it ought to be the object of the Convention to prescribe that which is right and proper and then oblige the legislature to adhere to it. They are so often operated on by extraneous influences that are apart from the public will as to need this restraint. I shall therefore oppose the motion of the gentleman to amend by diminishing the territory.

The question was taken on the amendment of Mr. Hervey, and it was rejected.

MR. HALL of Marion. If no gentleman proposes any other amendment, I renew the motion I made before.

MR. BROWN of Kanawha. I will now, then, say a word in objection to the gentleman's amendment. The only effect that will result from the amendment of the gentleman from Marion would be to allow the legislature to create as many counties as there are towns that will have population sufficient to exceed or come up to the required number for a county. That may happen in several of your towns, and if it does not exist now it may very soon happen. To make your counties and towns coincide in their boundaries I think is objectionable. You circumscribe all that community who then are outside of this little village and throw them into a community separated from the center around which all depended for many years. The county thus made of the town may have a much larger population than the territory remaining, which must be thrown into a separate organization and must conform to a new center. That must be the result if this should be carried. For every city will seek to become itself a county; and then you have a city (or town) corporation and a county corporation in the same limits with nothing distinctive in its features. I think this amendment is really more objectionable than the one we have just voted down, and I must therefore vote against it.

MR. HALL of Marion. I think that while that might be as suggested by the gentleman from Kanawha, that where they have cities they might thus form them into counties with a separate organization, yet I think that would not be a hardship on the surrounding people, but that they will desire it. I see no particular inconvenience from it. For example, at Richmond they have a separate organization and a court house county is in the city, and then the city as it exists has a city organization for the city affairs proper. The object is not to give a city power sufficient to entitle them to a separate position outside but to hold them in that position, to put it in the power of the legislature to give them a separate existence if they seek it. They have every reason for their protection. The city will never propose it unless beneficial to its people; it is only that when the people seek it, that whenever an application may be made to the legislature that body may be at liberty to grant their wish; that we shall not defeat that wish by placing a restriction in the Constitution, but leave it to legislative action. But I do not comprehend what benefit can accrue to anybody by this territorial restriction. But legislative discretion in that respect is necessary

for the protection of those who otherwise might be out-weighted on their injury by the concentration of power in one part of a county so as to control everything without regard to the interests of a community that would be entitled by its population to its separate existence.

The question was submitted and Mr. Hall's amendment was rejected.

MR. STEVENSON of Wood. Mr. President, I propose to offer an amendment without any discussion on my part, that is to strike out the words "and fifty" in the 86th line. I would just say this, that some members of the Convention have intimated to me that they desired to have the counties somewhat smaller; and some persons—citizens who are not members of the Convention—have intimated to me the same thing. I confess I am not very well posted in reference to what the size of counties should be. This much I do know, that in consequence of the peculiar shape of our counties if we have them 450 square miles and the court house, or capital, of the county should be at the end or nearly so it will make it a matter of very great inconvenience and difficulty for the citizens to reach that in matters of business which will become necessary, of course, to all the citizens of the county at some time or other. This would be avoided, of course, to some extent. As we have refused to pass 350, if we should make it 400 it would leave the county a respectable size for all useful purposes. Besides, take some very small county, such as Pleasants. Difficulties will arise where an adjacent county becomes very large and preponderant in population. A rule that would facilitate the detachment of a portion of such preponderant county and its addition to the small one, would tend to smooth these difficulties and be mutually beneficial.

Mr. Stevenson's motion to amend was rejected; and the question recurring on the section, it was adopted.

MR. LAMB. The subsequent sections have all been acted on by the house until we come to the 34th section. That was laid over at the request of the chairman of the Committee on Finance, who have reported provisions on this subject. I have no objection to whatever course the Convention may take with regard to it. We should either strike it out with the intention of taking it up when the other report comes up for consideration. For the purpose of deciding the matter, I move to strike out section 34. The subject

will come up necessarily in connection with the report of the Committee on Finance, to which it perhaps properly belongs.

MR. PAXTON. This section seems more proper to the report of the Committee on Finance with other sections on the same subject. The sections are about alike except in one particular.

MR. LAMB. It is simply a matter of form.

MR. VAN WINKLE. It would be much better to consider it with the report and then we have the whole matter before us. I think the motion of the chairman of the committee ought to prevail.

MR. BROWN of Kanawha. No matter in what form or by what committee this provision is reported, it seems to me very essential that it be adopted, and that the regular statements, etc., should be published. I do not see how we can better it, or enlarge it or contract it, by changing the time or place in which we consider it. I am in favor of adopting it here.

MR. VAN WINKLE. I would beg leave to suggest that these reports after they are acted on have got to be reprinted before final action. Now, it does not so clearly appear that the subject of size and numbers of counties was one of the many things referred to the Committee on County Organization, but it does appear to me that this was not a subject referred to the Committee on the Legislative Department. All matters connected with taxation and finance were distinctly referred to that committee. Now, would not it be better to have all this subject before us in one report, to make one part congruous with another, that we may see the necessity or non-necessity of any special provision; of seeing what other provisions are provided? It is a matter, of course, simply of finance; but I think that committee ought to be consulted, and that is best done by allowing this to be considered by allowing this to come before the Convention with the report of the Committee on Finance and Taxation. That committee have reported almost the same thing, and passing it by now does not prevent its consideration; does not indicate that this is not to pass. I apprehend that there will be no objection to it. But it seems to me it would be better in subsequent proceedings of the Convention, to have it come up in its right place.

Mr. Lamb's motion to strike out the section was agreed to.

MR. LAMB. The 35th section has not been acted on.

The Secretary reported it as follows:

"35. The legislature, in cases not provided for in this Constitution, shall prescribe by law the terms of office, powers, duties, and compensation of all officers of the State, and the manner in which they shall be appointed and removed."

MR. LAMB. I submitted a substitute for that section and the 11th section of the report. I am not particularly wedded to the terms of the substitute though in some respects it seems to me section 35 should at least be amended. The expression "officers of the State" is not the correct expression to use in that connection, it seems to me, as it would imply that the authority of the legislature was confined to fixing the fees, powers and duties and compensation of state officers: This is not the intention, of course. The expression ought at least to be altered if the section is retained by inserting something like this in its place: "all public officers and agents." Or if you want to be still more explicit or precise: "all officers of the State, counties, townships, cities and towns." But "all public officers" would perhaps be an improvement in the language of the section. Then "the manner in which they should be appointed and removed," should be "appointed or elected or removed." Another thing I think ought to be embodied in that section to prevent a difficulty of construction that may arise out of the provision we adopted in regard to impeachment. We adopted in regard to impeachment a provision that declares that any officer of the State may be impeached for maladministration, corruption, incompetency, etc. The result of that may be his removal from office. I do not wish to leave it to any inference or argument that this is to be the only mode in which officers are to be removed from office; and if the terms we have adopted in the article in regard to impeachment does furnish an argument even or a doubt on that subject, we ought explicity to declare that "The legislature shall have authority to provide by law for the removal of officers by impeachment or otherwise."

I would move to strike out the words "all officers of the State" and substitute "all public officers and agents." It is a mere correction of expression intended to make the regulation express what we mean.

MR. BROWN of Kanawha. I believe the motion is to strike out and then substitute.

MR. LAMB. Yes, sir.

MR. BROWN of Kanawha. I confess I am opposed to the whole section, and shall move to strike it out entirely. The legislature has all these powers. We propose a delegation of powers to the legislature. It is a work of supererogation. In the first section of this report we have declared by a general delegation of all the power in the commonwealth to the legislature, that the legislative power of the State shall be vested in the senate and house of delegates, and that embraces all the legislative power it is in the power of the people to delegate. The only question is whether in the Constitution they choose to restrict that delegation. Now the particularizing is not adding any power. It rather likens itself to a bill of particulars filed in a court of the various items claimed. But whether this provision is here or not the legislature have the identical same power that it proposes to grant; for that has all been granted, and they may depart from it in every particular that is here prescribed when they in their wisdom see fit. It is therefore useless to use the language; it is stuffing the Constitution with the particulars of items that have been carried under the general grant of the house. The Constitution is properly a restriction on the legislature; and the Constitution is that work of the people in which they are restricting their legislature from using all the power that otherwise would be in their hands to use. I propose to put into this Constitution nothing that is not necessary to go in. Particularizing all the powers contained in the general grant is wholly unnecessary, cumbersome and highly improper.

THE CHAIR. (Mr. Caldwell) Do I understand the gentleman makes a motion?

MR. BROWN of Kanawha. Yes, sir; I move to strike out the whole section.

MR. LAMB. I did not expect to say anything on this question at the present stage of the matter. As has been often stated to the Convention, the proper parliamentary rule is to allow the section to be prefected as well as it can be done by the friends of it; and then having put the section in the best shape, if it does not suit the Convention, they can strike it out.

MR. BROWN of Kanawha. For the accommodation of the gentleman, I will withdraw the motion.

The question being taken on Mr. Lamb's motion, it was agreed to.

MR. HERVEY. In order to change the section so it will be obnoxious to the objections of the gentleman from Kanawha, I move to strike out "may" in the first line, in the 5th line, in the 7th line and in the 10th line, and insert—

MR. VAN WINKLE. The gentleman is proposing to amend the substitute for this section, which has not yet been proposed and is not before the Convention.

MR. LAMB. Without a vote on the matter, I suppose the Convention will accede to the propriety of inserting after the word "appointed" the words "or elected." They do not intend certainly that the legislature should only provide for the appointment of officers and not for their election by the people. I want to exclude a conclusion. I move to insert "or elected."

The amendment was agreed to.

MR. LAMB. I want to move to add at the conclusion of the section the words: "that they may provide by law for the removal of officers by impeachment or otherwise."

The amendment was agreed to.

MR. BROWN of Kanawha. I move now to strike out the whole section.

MR. LAMB. The question may be taken on the adoption of the section. It is substantially the same.

MR. BROWN of Kanawha. The legislature have the power to prescribe the punishment of offences and improper conduct of men in office, and to define what is improper conduct of men in office which will constitute the ground of punishment. The legislature has a general power; and if it is the purpose of this proposition to give additional power to that, to turn out a man simply because the legislature chooses to without any offense at all, then I shall vote against it on principle. That any set of gentlemen shall disfranchise men simply because they in their supremacy, as this Constitution would confer on them the power, would choose to do so, would be extending a power I would not be willing to give. The legislature have the right to prescribe the duties and require the performance of every officer in the commonwealth, and if he fails to do it he is a subject for impeachment; he may be impeached; and if not, he may be tried before the courts in any way the law prescribes, therefore to give power to do that thing is but repeating

what has been done in the general clause. If it is intended to give a power that is over and beyond that, to disfranchise a man for nothing, I should oppose it on principle. In either event, therefore, I am in hopes the Convention will vote down this whole section now as amended, as really embracing a repetition of grants of power already delegated, and nothing is to be attained by the repetition.

MR. LAMB. Mr. President, the object of this section I supposed would have been apparent, though there is a great deal of force in what is said by the gentleman from Kanawha. It is to provide for the difficulty which is pointed out to us very forcibly not long ago by the member from Lewis to exclude a conclusion, that where you provide for one thing you exclude necessarily all others. You provide in the Constitution for the terms, the powers, compensations, etc., of certain officers. The conclusion may arise on that statement of the case that these are all the provisions on the subject that you intended to exist in the fundamental laws. As in this case of impeachment we have provided in the section which has been adopted in regard to impeachment for the removal of officers by impeachment. If we stop there, what is the inference? It certainly raises a difficulty, raises a doubt and difficulty, whether we do not leave these officers to hold their office subject only to removal by impeachment, and that this is the only mode we have provided for their removal. Where you prescribe terms of office, etc., in the Constitution, designated certain officers, it may lead to the inference, a fair one in certain cases, that this was all you intended to have on that subject; that there the power of appointing and of removing officers was to cease. It is a principle of very general application in regard to the construction of laws and constitutions that the expression of one is the exclusion of another. Or as the maxim is expressed in Latin—though I have nearly forgotten what little I ever knew about Latin: *"Expressio unias exlusio est alterius."*

This provision is simply intended to remedy any difficulty that may arise out of the application of that principle. For instance, in your report on county and township organization, you do provide, if I do not mis-recollect that report, you do expressly say there that the county and township officers may be removed as the legislature may prescribe by law. Now, suppose that section is adopted. The question comes up as to another officer. Here you thought it necessary to say that certain officers may be removed as the legis-

lature may prescribe by law. What is the inference? That you did not intend that this power should exist except in that special case and in other cases in which it may be inserted in the Constitution. I will not undertake to say as a lawyer that the section is necessary but I am inclined to think it is, especially in reference to the section you have adopted in regard to impeachment.

Then as to vesting the power with the legislature to remove officers *ad libitum* according to their own good will or pleasure, with or without cause, the provision, as I have proposed it, is that they may prescribe by law. The very first thing we learn when we go to studying Blackstone is that in this prescribing by law the law must exist anterior to the offense. The law must be there, and the officer must be removed in pursuance of that law. There may be an advantage, upon the gentleman's own principle, in the section as stated. If we do state that the legislature may prescribe by law—which requires the law to exist previous to removal; if we state that they may prescribe by law for the removal of officers, it does exclude the conclusion that they can remove officers in any other way, unless a law previously exists under which those officers are to be removed. With these remarks, I submit the matter to the Convention.

The hour having arrived, the Convention took a recess.

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AFTERNOON SESSION.

THE PRESIDENT. When the Convention took a recess it had under consideration the adoption of the 35th section, as amended.

The question being put, the section was adopted.

MR. LAMB. Mr. President, all the sections reported by the Committee on the Legislative Department, according to my memorandum, have been acted on.

THE PRESIDENT. The Chair would remark that there was a different motion made on the section, that the vote to strike out was on the table.

MR. LAMB. What was the motion?

MR. CALDWELL. I certainly understood the gentleman from Kanawha to say that he preferred the question should be on striking out.

MR. STUART of Doddridge. I thought that in voting on the question I was voting for the striking out. That is why I voted that way.

MR. LAMB. It will be reconsidered in that state of the case.

There being no objection the vote adopting the section was reconsidered.

MR. VAN WINKLE. A motion to strike out cannot be made until something is struck in. The question is not on striking out the committee's report. The question is, Shall the section be adopted? and if you say it shall not be adopted it is equivalent to striking out. It is only a matter of form. I am aware that the gentleman from Kanawha has certain objections to the section as arranged, and if it could lie until he comes in—I suppose he will be here in a few minutes—he could state what his objection is.

MR. LAMB. I move we pass it by.

MR. POMEROY. I do not think that is necessary. The gentleman from Kanawha stated his objections and told us that he preferred taking the motion to strike out. There is an advantage in such a motion, and he preferred it in that shape. I think we are prepared to vote. I think the Convention have a decided opinion that they will adopt the section, and therefore we can vote on the motion to strike out.

THE PRESIDENT. Will the Secretary just report the section as amended.

The Secretary reported the section.

MR. SOPER. Mr. President, the gentleman from Kanawha moved to strike that section out. He made an argument in favor of his motion, and he was replied to by the chairman of the committee. We then took the recess. I suggest the propriety of passing by, not taking the vote till he comes in.

I move, sir, that it be passed by until he comes in.

MR. SINSEL. It seems to me it will be a bad precedent. If we get to passing by this part and another on account of members being absent, we will be at it all the time. We should take business in its regular order. It would be an inducement for them to be prompt here. Every man ought to be here in his place and ought not to be absent without good reason.

THE PRESIDENT. The question is on passing by.

The motion to pass by was agreed to.

MR. LAMB. Mr. President, I submitted some time since to the Convention a proposition providing for amendments to the Constitution without resort to a convention. I think the necessity of some provision with that object in our Constitution will be apparent. Take what care we may, bestow what labor we may, whatever consideration of this subject there may be some essential provision omitted; there may be some defect in our work that would require amendment. If that occurs in a particular instance, if it occurs in any case in which it may properly be amended without resort to calling a convention for the purpose of overhauling the whole instrument, I presume there is none of us who would not prefer it should be done in that manner. The country is pretty well tired of conventions. In the State of Virginia at least, we have had enough of them. At the same time I fear that our work may prove so defective in many respects that amendment may be necessary when it comes to be put to the severe test of practice.

I offered a provision especially authorizing the amendment of the Constitution without resort to conventions in addition to the provision which was adopted by the Convention, the 43rd section, providing for the calling of conventions. That provision, which has been printed, is substantially to this effect: It authorizes the legislature by a majority of all the members elected to each branch—no less number can do it—to propose amendments. The amendments so proposed necessarily lie over until the next election of members of the legislature is had and shall be published at three months before that election in some newspaper in every county in which a newspaper is printed. The people, if they see proper, therefore will elect new members of the house and new senators with special reference to the amendments to the Constitution so proposed. Then the amendments are submitted again to the legislature, and if confirmed by a majority of each house, they have to be submitted to popular vote. If more than one amendment is submitted to the people at the same time, they are to be submitted in such manner that the people may vote on each amendment separately. This provision is not an experiment of mine, no invention of mine. It is a provision for amending constitutions which seems to have met with general favor throughout the country. It is the mode of amending where a resort to a convention is not to be had which is adopted by many more states than any other mode of amending their constitutions. If I recollect aright, there are some

twenty states that require that amendments which are to be proposed in this way to the popular vote shall have passed the two houses before they are submitted to the people. It insures, on the one hand, that these amendments will not be proposed for light and frivolous reasons. It insures that the fundamental laws of the commonwealth will not be changed for light and transient causes; but, if they are to be amended that it shall be by the deliberate action of the legislature, in the first place, ratified by the popular vote, in the second place.

I do not know that I need occupy the time of the Convention any longer in explanation of this provision, but I move its adoption.

MR. SINSEL. I would just suggest, would it not be better to say "published in every newspaper in the State." You see many persons read but one paper, while there may be two published, and it gives one class of individuals the advantage over others.

MR. LAMB. I do not know that I have any objection to that. The provision as it stands now requires it to be published in some newspaper in every county in which a newspaper is printed; that that publication shall be at least three months before the people hold the election for the second legislature. I have no objection.

I will just state that in some constitutions in which I find a provision of this kind the expression is, at least one newspaper in each county. I think that would probably be better.

MR. SINSEL. There is this objection to it. Men have favorite papers. I may take mine and no other paper. If they publish it in the other paper I might get the notice while another half of the citizens might take the other and they would be the one-half deprived of this notice, unless they borrowed it of their neighbors.

MR. STUART of Doddridge. What is the question?

MR. HERVEY. I think it would be well enough to let that be inserted in the ordinary way.

THE PRESIDENT. Much time would be saved if gentlemen would wait till the question is propounded. The question is on the amendment of the gentleman from Ohio.

MR. LAMB. I would ask the reading of the proposition.

The Secretary read it as follows:

"Any amendment to the Constitution of the State may be proposed in either branch of the legislature; and if the same, being

read on three several days in each branch, be agreed to, on its third reading, by a majority of the members elected thereto, the proposed amendment, with the yeas and nays thereon, shall be entered on the journals, and referred to the legislature at the first session to be held after the next general election; and shall be published, at least three months before such election, in some newspaper in every county in which a newspaper is printed. And if the proposed amendment be agreed to, during such session, by a majority of the members elected to each branch, it shall be the duty of the legislature to provide by law for submitting the same to the voters of the State for ratification or rejection. And if a majority of the qualified voters, voting upon the question at the polls held pursuant to such law, ratify the proposed amendment, it shall be in force, from the time of such ratification, as part of the Constitution of the State.

"If two or more amendments be submitted at the same time to the voters of the State, they shall be submitted in such manner that the vote on the ratification or rejection thereof shall be taken on each of the proposed amendments separately."

MR. STUART of Doddridge. I rose first merely to inquire what the question was. It has been debated considerably over the house, and I could not understand it. I am always disposed to wait until the Chair propounds the question, if the Chair will only restrict members to that rule.

THE PRESIDENT. I would really request members to always wait until the Chair has propounded the question. All will understand that the gentleman making a motion will be entitled, by common courtesy, to the floor first, and after his explanation of his motion, then of course his rights will not be exercised to the exclusion of others.

MR. STUART of Doddridge. That is right. If the gentleman from Ohio desires . . .

MR. LAMB. I have already made the explanation I wanted to introducing the matter.

MR. SINSEL. If the gentleman from Doddridge had been paying attention he would have found the rules of the house have not been violated in this instance. The gentleman from Ohio stated that he had an independent proposition to offer and already offered that to the Convention. I simply suggested one alteration that he might make himself without the action of the Convention on it.

THE PRESIDENT. The Chair did not mean that the gentleman did anything out of order. It has repeatedly happened that follow-

ed one motion with another so rapidly that the Chair could not have propounded the question and the Convention did not really know the meaning of the question that was before the house. I know a number of speeches have been made here on things that were not then properly before the house. It is better to let the Chair after a motion is made state the question to the Convention.

MR. STUART of Doddridge. I do not want to get up any discussion on this question. But I believe the members will recollect it is the rule that we should always address the Chair, "Mr. President," and go no further until we are recognized by the Chair.

MR. STEVENSON of Wood. Now, I would ask as a matter of order what is before the house?

MR. STUART of Doddridge. I have yielded the floor two or three times and will yield again if the gentleman wants it. I understand the question is on the motion of the gentleman from Ohio to insert an additional section looking to the amendment of the Constitution we are now framing without calling a convention; and I believe it was read once or twice by the clerk. I do think I was not far out of the way when the question had been up in speaking on these rules; but the suggestion of anybody, if it leads to the proper result and would indicate the course we are to pursue I am always willing to hear.

THE PRESIDENT. The Chair is himself pleased to receive suggestions from any members.

MR. STUART of Doddridge. If the gentleman from Wood can make a suggestion that will throw light on the subject, I will be glad to hear it.

MR. STEVENSON of Wood. I remarked awhile ago that there was a good deal of debating on this question on this side of the house. There had been no debating so far as I was concerned. I made simply a suggestion to the gentleman from Ohio in reference to an expression in this substitute or report; and as the motion was up now, the motion of the gentleman from Ohio, to adopt the section, I thought as a matter of course the gentleman from Doddridge should speak to the question.

MR. STUART of Doddridge. I would simply say that I did not say the members on this side of the house at all. The gentleman

is mistaken in that. But now I will drop the subject.

I am opposed to the proposition of the gentleman from Ohio and shall confine my remarks and make them very short. We are framing a constitution here that I hope will have some permanency about it. It will be looked on as the constitution of the new State of West Virginia, and we will live up to it and act under it. I want gentlemen now to pay particular attention. If we adopt the motion of the gentleman from Ohio it would be nothing but change, change, eternal change, written on the page of our Constitution, year in and year out; and instead of coming up to the legislature under that Constitution to pass laws in order—instead of electing delegates for the purpose of framing laws subject to that Constitution and under it, the great topic would be excited, every canvass before the people, will be amendments to the Constitution, and we will try to make the Constitution legislate for us in place of legislating under the Constitution. Now, that will be the result, just as sure, gentlemen, as we adopt it. I do not know how this thing has resulted in other states. The gentleman from Ohio very properly cites various other constitutions. They do not have any weight with me unless I know how they have operated. It strikes me, sir, forcibly that if we adopt this section which the gentleman has offered as an addition to the report of the Committee on the Legislative Department, it will be, as I have before said, nothing but change, change written upon the history of our State. And we will attempt to legislate by the Constitution instead of legislating under the Constitution.

Now, that is my reason for opposing. It is very short and brief.

MR. STEVENSON of Wood. Mr. President, I have an amendment which it seems to me ought to be made to this section. It will avoid the difficulty, or at least part of it, suggested by the gentleman from Doddridge. I propose to add at the end of the period in the 18th line these words: "But no amendment or amendments shall be submitted to the people oftener than once in five years." It seems to me, sir, if I am in order now, it will be obvious to the Convention that some amendment of this kind should be in this provision. I think there ought to be some limit to the time that the legislature shall have power to pass these amendments and have them put to the people; otherwise we may have a batch of amendments every year foisted on the people and an expense will be incurred in the legislature adopting them, and the people's time

and the people's money will be expended either in adopting or rejecting the amendments which may be introduced by the members of the legislature. If there is a limit of this kind that will prevent the submission of amendments oftener than once in three or five years, or any other period you see proper to adopt it seems to me it will prevent that difficulty. I find a provision of this kind in some of the constitutions which I have examined where a provision very much like this of the gentleman from Ohio is also found in connection with that provision. As it is now the legislature will have power to introduce and pass amendments at every session of the legislature, and they may have it fixed so that amendments subsequently may be passed at every session of the legislature and the people may be put to the expense too frequently by holding elections in the State on amendments which they may vote down and which are not really necessary. I should offer the amendment without thinking much about it, but I really think it necessary.

MR. HALL of Marion. I concur with the gentleman from Ohio. Whilst I concur in the object to be attained by this addition and also with the objects sought to be attained by the proposed amendment of the gentleman from Wood, I beg leave merely to call the attention of the Chair to the fact that we are not acting on a proposed amendment; that it is an addition; it is not mandatory in any part of the report that was submitted by the committee. It is proposed as a continuation of that report. If I am right in this it will be in order for me to propose an amendment to the amendment proposed by the gentleman from Wood county. I think the Chair by looking to the matter will see that I am right in that position. And it occurs to me, sir, that the object to be attained in order to do it fully by the proposed amendment of the gentleman from Wood must necessarily not only limit the matter as to submitting these amendments to the people but it is as important to exclude it from the legislature except at fixed periods. I propose, as an amendment to the amendment of the gentleman from Wood, to begin the section by saying: "In the year 1865 and at periods of five years thereafter," any amendment to the constitution may be proposed, etc., looking to the matter of preventing this continual agitation in the legislature; for if we are only limited as to the times at which we shall submit to the people amendments that may be proposed by the legislature it will leave the door open, and every man that has a hobby, with a very nice saddle on, which he will ride to the capital; and there will never be a session of the

legislature without some half dozen to two dozen hobbies in the way of propositions to amend the Constitution.

THE PRESIDENT. The Chair is of opinion that you could hardly add anything to or take anything away from a report without amending it.

MR. HALL of Marion. I understand then that the Chair would regard the additional section proposed by the gentleman from Ohio as in the nature of an amendment to the report. I will acquiesce, of course, I had taken a different view of it, and I had proposed to offer that as a substitute to the amendment of the gentleman from Wood. As I understand a remark the gentleman threw out his object is not only to prevent the evil or harassing our people with continual agitation of questions of this sort by submitting to them at elections for the legislature but also to prevent the time of the legislature being consumed with these things. It does occur to me that we ought to have a restriction of some sort in this respect, and I favor the idea of the proposed amendment of the gentleman from Ohio, because I think we ought to so provide that we will not be under the necessity of having conventions every few years, and we are at work here now without the lights before us that men usually have when they enter on a work of this sort; and therefore there is really an additional importance and necessity for some provision of this sort. Otherwise we may be under the necessity, doing our work as well as we can—there may be a necessity and in all probability would be, for an early convention to do what we will have omitted to do for want of the proper light and information before us. Because we are really cut off from all the data we ought to have to enable us to do our work properly; and I want to accomplish a double object and prevent this consuming of time and money in the legislature; and I think fixing it in 1865 for the first, that will be short. We cannot suffer greatly between this and that time as to any amendment that may be found necessary; and then if we have it at periods of five years we can suffer no great harm. I was rather inclined, indeed, when I began to prepare the substitute, to say that after 1865 they should be limited to periods of ten years; but I was satisfied the gentleman from Ohio is not proposing any limit at all and knowing he had much more material on this matter than I had, I thought to fix it at intervals of five years it would place it equi-distant between the census that will be taken by the United States; and I believe we

incorporate a clause somewhere that will authorize a census by the State . . .

A MEMBER. We did not.

MR. HALL of Marion. We did not? But it will give us the advantage at every other one of those periods of having before us the results of the census as taken by the United States. It may, however, be necessary to propose—it would in that event—to say that in 1865, and then at periods of five years afterwards. Because we would have to have a little time to get the returns.

MR. POMEROY. Mr. President, it has been said by gentlemen over the way I do not rise to make any lengthy speech, but it appears to me this substitute of my friend from Marion is not a good substitute, and therefore I cannot support it. I believe if you fix a definite time and state it in the Constitution when amendments are to be proposed to the Constitution, that you will find one man or more in the bounds of the State who will conjure up something to propose as an amendment every time that period comes around; and I do not doubt you will find some in almost every county; because they will say, here is the year for amendments and they must distinguish themselves by offering some one and they will judge it is necessary, or they will bring it up. I have no doubt of the good motives of the gentleman offering it; but I do think it would have a contrary effect from what he desires. I think it would trouble the legislature instead of the contrary. Then they would think, here is the year specified in which amendments ought to be proposed, and if there is no other man to propose one, then I must propose one. I think it is far better to leave it as the gentleman from Ohio has reported than to go for this substitute in place of the amendment of the gentleman from Wood.

MR. VAN WINKLE. The gentleman from Doddridge is unquestionably right in the supposition that the insertion of a clause of this kind in the Constitution is rather inviting amendments to it than otherwise. My colleague I think is also right in thinking that some restriction should be placed on this in consequence. Perhaps the gentleman opposed is also right so far that I think he proposes a way of getting at it; but the difficulty that occurs to me in reference to the whole subject is this: We shall, no doubt, if we are hurried too much, finish up our labors here, elaborate them and use every possible precaution to see that we have got a whole Constitution when we have done it. But, sir, it is very

possible that with all the care we can use that some provision almost indispensably necessary may be omitted or that some incongruous provisions, both of them right in themselves perhaps, not working together, may be introduced. There may be difficulties of that kind occurring in the instrument thus sent forth which it would be desirable to rectify at the earliest possible moment. I therefore see the value of this provision, at any rate, for the first few years after the adoption of the Constitution. Those who contend that some provision of this kind is desirable in order to prevent the necessity of calling a convention whose proper business would be a complete revision of the Constitution too frequently think a provision of this kind would be valuable. It is like other provisions: it has its good and its evil; it is liable to both; and I think the consideration that I mentioned just now—the possibility that there may be something wanting in this Constitution when first adopted—something perhaps that will not appear until an attempt is made to put it in operation, that an opening should be left by which amendments could be made within a reasonable time, ought to have great weight with us.

If, then, sir, it is the pleasure of the Convention to adopt this provision substantially, I would suggest that instead of this five year proposition, after the year 1865, we should leave it from the year 1862 when we shall probably go into operation, to 1865 to have these propositions made, or any other year that might be thought best to meet the case. I cannot move that now, sir, as an amendment, because there is an amendment to the pending amendment now.

MR. HALL of Marion. Will you re-state it?

MR. VAN WINKLE. To amend your substitute by saying that any amendment to the Constitution should be proposed in either branch of the legislature in the year 1865 and at periods of five years thereafter—which I believe is substantially yours; to make it so that amendments may be proposed at the next session of the legislature previous to and including 1865; and that amendments thereafter proposed should not be submitted to the people oftener than once in five years. That is leaving the thing open as far as possible up to and including 1865, and after that the people shall not be troubled oftener than once in five years.

MR. HALL of Marion. I have no objection to accept the suggestion.

MR. STEVENSON of Wood. Would it not be better to read this way: "but after the year 1865 no amendment shall be submitted to the people oftener than once in five years?"

MR. HALL of Marion. I could accept that as a substitute. Mine covers the question of the proposition from the legislature.

MR. VAN WINKLE. There is force also in the suggestion of my friend from Hancock; that when this period of five years rolls around every person will think he ought to offer some amendment. I can only reply that all these privileges are liable to abuse; but we are going to make so perfect a constitution that the pretext for the necessity of an amendment can hardly arise!

MR. BROWN of Kanawha. I regret that the gentleman from Marion has accepted the amendment suggested by the gentleman from Wood. I am averse to submitting this Constitution to the people one day and turn straight around and prepare amendments from that up to 1865. I prefer the amendment as I understood it first stated, that either branch of the legislature may propose amendments in the year 1865 and every five years thereafter. I think we ought to have at least a day or two's rest after this is adopted. Because we have to go through the fiery furnace of discussion before the people before it is adopted. There ought to be a day or two left for it to roll around in its operation, to learn from experience before you begin to exercise it. The great difficulty of the present age is that constitutions have lost all the character of sacredness, and this very provision is, as I understand it, to furnish a safety valve to secure the country and people against this constitutional revolution. Now unless you give some time for the Constitution and the government under it to operate in, the people cannot learn to act from experience; and if you begin the very year this Constitution is adopted to make amendments to it, then you are just arguing like you are here, going on a mere hypothesis of reason but have no experience to see how it operates. Now I prefer to let the year 1865 take place; and if an amendment is proposed you may begin the day after; but I think it unneccessary to invite any aggression in it before that time. So that I must vote against the proposition as accepted by the gentleman.

MR. VAN WINKLE. If you make the proposition in 1865 it could not be acted on until late in 1867. This ought to be considered in view of the possible omission of some important provision in our labors.

MR. BROWN of Kanawha. It seems to me we could begin to propose tomorrow but in the year you have fixed as the period which will be the time when this must be sumitted. The legislature will make a proposition; this is to be published in the newspapers and is a subject of discussion before the next election; and when the next legislature assembles it becomes a subject for their action. If they endorse the proposition, it goes back and is submitted to the people, and the time of the popular election is the time I suppose to which the period limitation must apply.

The Secretary reported Mr. Lamb's proposed amendment and the amendment to that as proposed by Mr. Hall of Marion, including his acceptance of Mr. Van Winkle's suggested modification, allowing amendments to the Constitution to be submitted up to 1865 and at periods of five years thereafter.

MR. LAMB. It strikes me the restrictions are all wrong. That we should be apprehensive of agitation for the call of a convention, I believe, but there is no reasonable ground for apprehension that the people are to be continually bothered by the submission of amendments to vote under a provision of this nature. Our apprehensions in this respect are turned in the wrong direction. We have this provision in many constitutions. Do we hear of this difficulty which is here suggested? Of a continual agitation, continual occupation of the time of the legislature upon the special and particular amendments? I will read in reference to this subject the provision in the constitution of New York:

"That any amendment and all amendments to this constitution may be proposed in the Assembly and that the same shall be agreed to by a majority of the members elected to each of the two houses. Such proposed amendment and the amendments shall be entered on the journals, with the yeas and nays thereon, and referred to the legislature to be chosen at the next general election of senators and representatives and shall be published for three months previous to the time of making such choice; and if in the next assembly, chosen as aforesaid such proposed amendment or amendments 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 to the people, in such manner and at such times as the legislature shall prescribe. 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."

The gentleman from New York, now representing Tyler can tell us whether the time of the legislature of that state has been occupied continually by proposed amendments to the constitution or the people been agitated continually by the consideration of such amendments. Gentlemen, this Constitution of the State of New York was adopted in 1846, and if this book is reliable there has been no single amendment made to it under this clause since. We have the same provision, in substance at least in the constitutions of many other states. In no less than twenty-nine constitutions, in no less than twenty-nine states (and I do not include Virginia in the number twenty-nine) out of thirty-four have they made provision for amending the constitution without reference to a convention. Some sixteen or eighteen of these constitutions contain provisions in addition in regard to the calling of a convention. Is this the evil which members seem to be so apprehensive of existing under the clause authorizing amendment by the legislature to be ratified by vote of the people? What is the lesson of experience in this respect? Has it not been that the great evil in reference to this matter of which we have to complain is in this agitating for the call of a convention, and not in this agitating and occupying the time of the legislature or in agitating the people, by the consideration of particular amendments introduced in this manner? I have not heard whether the gentlemen may have other information on the subject than I have; but in all the states in which similar provisions have been operative for years and years, this evil, so far as my information extends, which gentlemen seem to be so apprehensive of, has never been found to exist; while this evil of agitating for the call of a new convention, to tear up or lay anew the foundations of the social edifice—we know, gentlemen, what this is. Nor do I suppose—I hope—but with the best forethought I can give to the matter, I feel that I myself am utterly incapable of devising a set of provisions to operate on the people of West Virginia for all time to come, to meet all the emergencies that may arise through all the changes of circumstances which may transpire. I have no doubt that even if the work we suggest is the most perfect system that can be devised for five years to come, circumstances may change so as to render it a most improper system in reference to the condition of the people, the prejudices of the people, if you please, and the conditions of things that may exist in the commonwealth after a few years. Who can foresee all the changes that may occur within a few years? Who two years ago could have foreseen the state of things which exists here

now? And shall we leave our work in a condition in which there is no possibility of adapting it to the emergencies which may occur, no possibility of adapting it to the changes which are likely to occur, without calling a convention together to alter the whole system? I wish to avoid calling conventions so far as it may be possible properly to do so. When the necessity exists for them, they must come, and we can only lament that the necessity has existed. Recollect, gentlemen, a constitution is intended for perpetuity. To be a perfect constitution, you must foresee what the fallibility of human nature can do; you must be able to foresee the emergencies that may arise and adopt such provisions as will be exactly the best thing in these emergencies. That is what a constitution is. A constitution may be a perfect constitution for a few years, but the very change in the condition of the people may render it a most imperfect instrument after a year may have elapsed. Can you confine emergencies and necessities to the year 1865, or to the year 1870, or to any fixed periods? I think, gentlemen, we have enough in what has occurred in regard to such provisions in the states where they are adopted to justify us in saying that gentlemen are too apprehensive of this difficulty. If a man could get up in the legislature and have his amendment passed, we would have plenty of them proposed. But they are to pass in the legislature by a majority of all the members elected. Unless some emergency has shown the necessity for the amendment he proposes, it is seldom, indeed, that he will get the majority in each branch of all the members elected to concur even in submitting the amendment he proposes. If the condition of things has shown the necessity of the amendment, then, indeed a majority of each house can be expected to concur in it. Not a majority of each house, but a majority of all the members elected to each house. But, further, that amendment is to be published to give full notice as to the character and necessity of it to the people and when a new legislature is elected, that new legislature is to be required, by a majority of all the members elected to each house to confirm and approve of the proposition made before it can be submitted to the people. After all this occurs, it is to be submitted, and the people can ratify or reject according to their judgment of the public necessity.

So we see, gentlemen, why it is that this thing of disturbing legislatures and occupying their time with trifling and unnecessary amendments has not occurred in the states in which this constitutional provision is found. We guard in the very provisions here,

guard I think sufficiently, against countenance being given to this thing of amending and meddling with the Constitution for trifling causes. But whenever the case shall occur that a majority of all the members elected to each house would approve of an amendment; when the vote of the people shall have elected a new legislature with special reference to that matter, a majority of all the members elected to each house shall again be necessary. We have every security that prudence can suggest to assure us that the people will not be called on to vote unless the proposed amendment is a proper one for their suffrages. While the constitutions of twenty-nine states provide for amending their constitutions without the interposition of a convention, there is in one or two instances, as stated by the gentleman from Wood a provision requiring amendments to be proposed only at specific periods. The amendment he proposes is, I believe, taken from the Constitution of the state of New Jersey. I do not know how it has operated there. According to my judgment New Jersey has a pretty good constitution, and I suppose they have found no amendments necessary. But so far as that goes, we have certainly more than five to one where they have not thought a provision of that kind necessary; and we have the experience of the states in which this provision is in operation and where if I am not very much mistaken the evils gentlemen apprehend from it have been found not to exist in practice.

MR. HAYMOND. I am opposed to the section, opposed to the amendment and opposed to the substitute. I am opposed to the whole concern. It looks to me, Mr. President, as if we were fixing a standing convention, which I am opposed to. Sir, there are questions that will yet come before this Convention that if not decided in a certain way would come before every legislature and keep this whole country excited all the whole time. I therefore beg of this Convention not to pass this measure.

MR. HARRISON. Mr. President, I propose to amend the substitute by these words: "The legislature in the year 1865 and at periods not oftener than once in five years thereafter may propose amendments to this Constitution." I think that would bring the question more definitely before the house.

THE PRESIDENT. The question is on the adoption of the amendment to the substitute.

MR. BATTELLE. I just wish to say that I am in favor of the

amendment presented by the gentleman from Ohio and opposed to the substitute and other propositions. The only difficulty I can see if the amendment offered by my colleague is that it seemed to be a temptation for us to do our work loosely here with a view that mistakes made might be corrected by the people afterwards; but that objection is more than balanced I think by the fact that do what we will there may be some things permitted or omitted that may need attention hereafter. I am therefore in favor of the amendment as offered, and opposed to the subsequent propositions before the Convention. I will take occasion to say that for one I have not the very great dread of undue agitation in reference to constitutional questions either in our legislature or among our people that seems to disturb the imaginations of some gentlemen here. The Legislature of Virginia, I believe, has proverbially spent a great deal of time in discussing Federal relations, keeping the United States government straight! I should not regret at all to see that discussion diverted from questions of United States relations to questions of state relations; and I think that discussions of questions that affect the domestic concerns and welfare of our people will always be wholesome. I believe our Legislature and people will always be competent judges of what they want and what their interests require. If they are not who are? Discussions of such questions enlarge the scope of the public intelligence. So far from operating injuriously to any interest of the people or State, they would operate beneficially. Such discussions —I do not mean frivolous questions, operate to the advantage and instruction of the people.

THE PRESIDENT. The Chair would remind the gentleman that the question is on the substitute.

MR. POMEROY. Some of them did not hear it. Will the Clerk read the substitute.

The Secretary read it.

MR. BATTELLE. I acquiesce with this remark, that it has been the custom, if I recollect correctly, since the Covention commenced when the original proposition and various amendments are pending for a member who is speaking on the amendment to include in his remarks his views in reference to the whole propositions; and I thought I was only following out the practice which has been permitted here.

THE PRESIDENT. The Chair will admit that very much of that has been done and he has had the disposition to confirm the discussion as much as he could.

MR. BATTELLE. I certainly am disposed to adhere to the rule. I had about finished, however, sir, what I intended to say, and that was that I am opposed to these limitations on the rights of the people through their representatives to propose whenever it may be their good pleasure any amendments that may be deemed vital or important to the Constitution. I judge the practical workings of it will be not to keep the community unduly agitated, whereas if we make this limitation we shall probably repress some feelings and desires that if they could find vent would do no harm to anybody.

MR. VAN WINKLE. I rise to suggest that we are getting the tail of our kite entirely too long. The proposition of the gentleman from Ohio, which I did not think of before, is an amendment itself. The gentleman from Wood proposes to amend that; and then the gentleman from Marion proposes a further amendment; and now the gentleman from Harrison proposes to amend both. I think we will have to break off somewheres.

MR. HERVEY. That is a substitute, as I understand it, a substitute for the proposition of the gentleman from Marion.

THE PRESIDENT. The Secretary does not seem to have the amendment of the gentleman from Marion at all.

MR. HALL of Marion. Mr. President. For the amendment proposed by the gentleman from Wood I proposed a substitute, which was modified at the suggestion of the gentleman from Wood. The gentleman from Harrison moves to amend the substitute by making the substitute as I first proposed it. That is the effect of the amendment of the gentleman from Harrison, but different from the substitute as modified at the instance of the gentleman from Wood.

MR. HERVEY. As I understand the position of this question it is, first the addition proposed by the gentleman from Ohio; then the amendment to that addition by the gentleman from Wood; then the substitute of the gentleman from Marion; then the amendment to that substitute of the gentleman from Harrison. Is that correct? Then sir, I desire to offer an amendment to that amendment

(Laughter): "But the legislature may call a convention after 1875." (Renewed merriment.)

THE PRESIDENT. Has the gentleman from Wood a copy of the rules before him there? I would thank him to read the rule in reference to substitutes and amendments.

MR. VAN WINKLE. I am satisfied, sir, the substitute is only an amendment. Of course, it is in the nature of an amendment. I do not know whether I can find it.

MR. STUART of Doddridge. There is no question but what a substitute is an amendment, and there is now four distinct amendments pending before this body—five with the amendment of the gentleman from Brooke!

MR. VAN WINKLE. The rule established by Congress is: "No new motion or proposition shall be admitted under color of amendment as a substitute for the proposition or motion under debate." I am satisfied, and the gentleman from Doddridge confirms me, that amendments and substitutes are the same.

THE PRESIDENT. The substitute of the gentleman from Marion then, in the opinion of the Chair, would be out of order. The question will be on the amendment of the gentleman from Wood.

MR. HERVEY. I understand the proposition of the gentleman from Wood is an amendment.

THE PRESIDENT. To an amendment.

MR. HALL of Marion. Mr. President, I am fully persuaded that the decision of the Chair is right, and that my substitute I am satisfied is out of order, although I thought at the time it was in order. In speaking to the question of the gentleman from Wood, I will simply say that those who desire to restrict the agitation by our legislature as well as the other may do so by voting down the amendment of the gentleman from Wood, after which it will be in order to propose the amendments sought to be introduced too many stories up.

MR. STEVENSON of Wood. I also would take this occasion to advise the Convention of another fact, that if they wish to restrict the legislature in submitting these amendments they can also do it by voting for the amendment of the gentleman from Wood county, so that the gentleman from Marion will both be accomodated

by voting for my amendment. But, sir, as there has been a good deal of time wasted in the discussion of matters out of order . . .

MR. BROWN of Kanawha. Will the gentleman re-state his amendment.

MR. STEVENSON of Wood. At the end of the 18th line these words to come in: "But no amendment or amendments shall be submitted to the people oftener than once in five years." I was going to say, sir, that I will not waste the time of the Convention in discussing the matter any further than to say simply this: that I think the amendment or restriction will obviate the very difficulty that has been spoken of here by the gentlemen who oppose the amendment. This wrangling about amendments to the Constitution which may be got up every six months and every year, and brought into the legislature, as they unquestionably will be by gentlemen who are ambitious to display their talents in the way of submitting amendments to that instrument. In other words it will convert the legislature into a constitutional convention every year. So that instead of having to go through this turmoil and strife, anxiety and difficulty to get up a constitutional convention every twenty years, you will have difficulty almost every year in the State, and, as I said before, the time that should be occupied in making laws for the State or changing or modifying them to the immediate benefit of the people, is liable to be wasted by the legislature in introducing and discussing amendments to the Constitution. Now, that seems to me that is a difficulty that might occur, of course. I do not pretend to say it will occur every year; but I think it is one of the things that is certainly within the limits of possibility, and I think it is highly probable it will occur frequently. Now, the gentleman from Ohio read a provision in the constitution of New York on that subject, in which a restriction of this kind was not found. He also stated that there was a provision of this kind in the constitution of New Jersey, and I think it will be found in some of the other states if I recollect right besides the one which I am about to read now from the Constitution of Pennsylvania; and the whole provision is in fact in substance precisely, or nearly so, that proposed by my friend from Ohio:

"No amendment or amendments to this constitution may be proposed in the senate or house of representatives, and if the same shall be agreed to by a majority of the members elected to each house, each proposed amendments shall be entered on the journals, with the yeas and nays taken thereon, and the secre-

tary of the commonwealth shall cause the same to be published three months before the next general election in at least one newspaper in each county in which a newspaper is published; and if in the legislature next afterwards chosen such proposed amendment or amendments shall be agreed to by a majority of the members elected to each house, the secretary of the commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted 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 qualified voters of this state voting thereon, such amendment shall become part of the constitution; but no amendment or amendments shall be submitted to the people oftener than once in five years."

MR. HARRISON. I am in favor of the proposition of the gentleman from Ohio; but if I understand the object of the gentleman from Wood correctly I am in favor of his amendment, to prevent the legislature from continually wrangling on this subject. If I am correct in that, I think the words he has used are not sufficient for that purpose, and if he will adopt the words which I have used we will exclude it from the legislature as well as before the people. In reference to the limitation as to time, I think, sir, it is very probable that with the many new principles which will have been adopted in this Constitution, a great many of our people will be dissatisfied with it, and that if they are allowed the privilege of raising the question of amendment in any legislature that may convene after the Constitution shall have gone into effect, before they have tried it and found out what is good in it and what is not good, and the result of their dissatisfaction with it when it is submitted would be that at the very first session of the legislature amendments would be proposed. It seems to me therefore, sir, that it would be prudent to require them to try it for at least three years; and if experience shall then show that any of its provisions are not such as they want they can apply to the legislature. It would take, I suppose, something more than twelve months to pass a provision through the legislature and have it ratified by the people. That would make it 1866, but at the same time by extending it five years after the period of 1865 there still would always be five years between the periods at which proposed amendments should be submitted to the people. It seems to me that the amendment should not only be simply to exclude propositions from being brought before the people but they ought to be excluded from the legislature also after the periods specified in the amendment.

MR. LAMB. I do not rise to discuss the matter again, but simply to refer to the precedent which has been set in the Constitution of the State of Pennsylvania. It certainly shows that this thing of prescribing fixed periods for proposing amendments operates perhaps in the way that has been suggested by getting up a crowd of amendments at a time. The Constitution of New York, without any provision of the kind has not been amended since 1846. With this provision we find tacked to the Constitution of Pennsylvania since it was adopted no less than fourteen different amendments. Now, so far as the precedent goes between these two states, it would seem that this five year limitation would operate to increase the quantity of amendments rather than diminish them. That may not be a fair argument. The Constitution of Pennsylvania may have been much more defective than the Constitution of New York. The Constitution of New York may have operated perfectly and no amendment may have been necessary there; but certainly there is nothing in the facts as they bear on this subject to induce us to adopt the rule of Pennsylvania rather than the rule of New York. If our object is to prevent encumbering the Constitution with frequent amendments. With that provision the Constitution of the State of Pennsylvania has fourteen amendments tacked to it; without that provision the State of New York has none.

MR. STUART of Doddridge. I am certainly in favor of the amendment of the gentleman from Wood over the amendment as proposed by the gentleman from Ohio. It is true the amendment of the gentleman from Wood does keep this question from before the people at least five years; but it does not meet the objection which the gentleman seems to think it does, the agitation of this question every year in the legislature. Now, sir, we are adopting a constitution here and we find for the purpose of carrying out the object of economy we have said our legislature shall not sit but forty-five days at a session. We get to discussing these constitutional questions and the right to dicuss them every year in the legislative hall, it will require more than forty-five days if we are to judge of our action here, to discuss these questions, and instead of legislating and passing laws to be governed and regulated by this Constitution, we will be trying to legislate through and with the Constitution, and there is nothing in the world to prevent even though the gentleman may get up a discussion one session on a constitutional amendment proposed to the Constitution and

discuss that question that session for fifteen, twenty or thirty days. At the very next session, the same question will be raised again; and in this way we will have an everlasting wrangling and jangling over the Constitution. Now, this would certainly be the result in my opinion. I will vote for the amendment of the gentleman from Wood and then I hope it will be amended so as to meet his views at least so that these questions will not be discussed in the legislature and not have a right to discuss them in the legislature every year, and only submit them to the people in five years. It is only necessary then that we adopt the amendment of the gentleman from Wood and amend that so as to restrict this discussion in the legislature at least two years prior to the time it is to be submitted to the people. That is the purport of the amendment of the gentleman from Ohio. When this amendment should be raised in one legislative body discussed there and handed over to the succeeding legislature, and then there be discussed, have an election for members of the legislature have it adopted by the new legislature, and then submit it to the vote of the people. But instead of having it discussed for two years we will have it discussed for five years; and the canvass before the people for a seat in the legislature will not be conducted on any other principle than that of amendment to the Constitution; and you will see men coming out and canvassing before the people on certain amendments and propositions that are to be carried out in the proposed Constitution. We will have nothing but this change on change; continual wrangling over a thing that should be permanent and have more stability to it. I will vote, Mr. President, for the amendment to the amendment because I think it is better than the amendment, but I hope that it will be amended. I will vote against the whole thing unless it is.

MR. SOPER. Mr. President, I hope the amendment of the gentleman from Ohio will prevail, and that the amendment to the amendment will be rejected. I believe it, sir, to be wholly unnecessary, and I regret to hear gentlemen rise in their seats and pay such a wretched compliment to the gentlemen who we suppose will fill the legislative halls in this State hereafter. Those gentlemen certainly—I do not speak from any practical knowledge of the subject—but if the things which gentlemen attribute to our future legislatures do characterize their legislation, I shall be very sorry for the State. Now, sir, if our Constitution is adopted we certainly will not have a legislature under it until the end of the

year 1863. The greater part of that session we will be preparing laws putting the Constitution into operation. These laws will not go into operation probably until the year 1864, until after the Constitution shall have been put into operation by legislation the defects in it cannot well be discovered. But I submit, sir, that if a defect shall be discovered and if it is of that importance to the people to require an amendment to the Constitution—a single amendment—why ought the people to be delayed five years before they can get the benefit of that amendment? Under the amendment of the gentleman from Ohio the Convention will perceive that from the discovery of the necessity of the amendment inevitably two to three years must elapse before it can be accomplished. Now, that length of time certainly gives every reflecting man in the whole State time to examine and mature the thing to make up his judgment and act considerately. Why then do we want to have any of these squabbles which these gentlemen so much fear? I think them wholly unnecessary. The gentleman from Ohio has said he has taken his amendment principally from the Constitution of New York. I have had some knowledge, sir, of that constitution, I have had a little experience of legislation under it; and I can say that this subject of amendment I have never known it but very seldom agitated in the legislature. Amendments have been proposed—one or two instances I recollect—and when the amendment came to be submitted to the people, it was rejected. It grew out of high political excitement and had reference to the provision in the constitution restricting the right of free negroes to vote. An amendment to the constitution in that respect, sir, was agitated in the legislature; it passed two legislatures; it was submitted to the people and they rejected it. So that the constitution stands in that respect just as it was written.

I am confident there is no necessity of confining these amendments to periods of five years, as has been well said and illustrated from looking at the amendments to the Constitution of the State of Pennsylvania. Gentlemen will say that if you limit your time for your alterations to five years they will be agitated by the people. I do not say agitated in the legislature. They will be agitated by the people and accumulated, and probably will then be crowded on the legislature and people at the end of every five years. If you require but a single amendment, it takes but a very little time to agitate it and prepare it for the people to understand it and vote on it; and whenever the occasion occurs, I think they ought to have the right to do so. Now, as to the necessity of an amend-

ment of this kind, why the constitution which was framed in New York in 1846, that convention was composed of many of the ablest men within the state and they were occupied more than six months. They examined it very carefully and cautiously; and I believe that constitution has given very general satisfaction, with the exception I have mentioned, down to the present period. It is true, one of the great causes which led to the calling of that convention was the accumulation of business in the various courts of the state in consequence of the increase of litigation. And the difficulties which the gentlemen who prepared that constitution in 1846 endeavored to avoid have now again accumulated upon them; and I believe recently they have been agitating some change in the constitution in respect to the reorganization of the judiciary of that state. But with those exceptions, I am not aware of this matter having been scarcely agitated in the proposal of amendments.

Now, I cannot believe myself that whenever the legislature that is going to be elected under this Constitution, when we have got no political excitement or divisions of parties between us, I cannot believe the majority of that legislature are men who will be hunting out for topics for popularity and that they will be willing to do that at the expense of the people by spending their time in the legislature preparing propositions to the people to be voted on. I cannot put that estimate on the moral honesty and capacity of the gentlemen who I suppose will represent this State under the new Constitution. So I shall conclude until I am forced to come to a contrary opinion; I shall believe that no gentleman will get up in the legislature and propose an amendment to the Constitution that we shall adopt here unless there is a real necessity for it.

For these reasons, sir, I am opposed to the amendment, because I think there is no necessity for it; and for the additional reason, as I stated, that it will take till 1865 before ever any amendment can be matured so as to be submitted to the people; and if that be a necessary amendment and we tie them up for an additional five years, I think it will be a hardship which we would impose on them and which necessity does not require.

The question was taken on Mr. Stevenson's amendment to Mr. Lamb's additional section, and it was rejected.

The question recurring on Mr. Lamb's amendment,

MR. HARRISON. Is it in order to move an amendment to the amendment?

THE PRESIDENT. If it is not the same that was voted down.

MR. HARRISON. I understand it is not the same.

Mr. Harrison then submitted his proposition as previously stated by him, to insert in the 2nd line after the word "legislature" the words: "in the year 1865, and at periods not oftener than once in five years thereafter."

The question was taken on this amendment, and it was rejected.

The question recurring on the additional section offered by Mr. Lamb, it was adopted by the following vote:

YEAS—Messrs. John Hall (President), Battelle, Chapman, Caldwell, Dolly, Harrison, Hervey, Irvine, Lamb, Lauck, Powell, Paxton, Pomeroy, Robinson, Ruffner, Sinsel, Simmons, Stewart of Wirt, Sheets, Soper, Smith, Taylor, Van Winkle, Walker, Warder—25.

NAYS—Messrs. Brown of Preston, Brown of Kanawha, Brooks, Dering, Dille, Hansley, Hall of Marion, Haymond, Hubbs, Hagar, McCutchen, Parsons, Stevenson of Wood, Stephenson of Clay, Stuart of Doddridge, Trainer—16.

MR. CALDWELL. I believe, sir, that the action just had by the Convention disposes of all the amendments I know of proposed to be made in addition to this report except one, sir, that I have offered myself. I think, sir, the proposition that I make by way of amendment to this report is one of a grave character. I do not propose to take it up now. I merely rise for the purpose of asking members of the Convention if they have not a printed copy of the proposition I made they will procure one. The proposition has been printed, sir, and I suggest that we will in the morning be enabled to take it up for some deliberate consideration.

MR. LAMB. This has not yet been moved as an amendment. You had better make your motion and have it read.

Mr. Caldwell then offered the following as an additional section to the second report of the Committee on the Legislative Department, and it was read by the Secretary:

"The legislature shall pass no special act conferring corporate powers, other than for banking or for municipal purposes, or when the object cannot be attained under general laws; provided that

the power of municipal corporations to tax and incur debts may be restricted by law.

"Corporations, other than corporations for banking or for municipal purposes, shall be formed under general laws, but all general laws passed pursuant to this section may be altered or amended by the legislature from time to time.

"The property of corporations created under general laws shall be subject to taxation the same as the property of individuals.

"The right of way may be granted by general laws to corporations, provided the same shall not be appropriated to the use of any incorporation until full compensation therefor be made in money—the amount of compensation to be ascertained in a court of record, in such a manner as shall be prescribed by law."

MR. POWELL. Mr. President, do I understand that it is moved to adopt that section now?

THE PRESIDENT. The motion is to adopt that as an additional section to the report.

MR. POWELL. I understand the gentleman to desire that we reflect on it during the night. If it is moved to adopt it now, I have no more to say.

My object was this, sir. I deem the proposition so important that I should therefore ask the indulgence of this Convention to be heard on the subject contained in this proposition; and as it is near the hour of adjournment, I would prefer that the consideration of my proposition should be deferred until tomorrow morning; and it was for that reason that I moved an adjournment and only withdrew the motion under the impression that there was some other proposition that had not been acted on that might be taken up this evening and acted on.

MR. POWELL. I wish to renew the motion to adopt the proposition submitted by me some time ago and renewed by my colleague, that the legislature may make laws regulating or prohibiting the sale of intoxicating liquors within the limits of this commonwealth. I do not think it will require much time to dispose of this proposition.

THE PRESIDENT. Is it the purpose of the gentleman to offer that as an amendment to the report?

MR. POWELL. As an amendment to the report.

THE PRESIDENT. The gentleman would be out of order, in the opinion of the Chair, in that form.

MR. POWELL. I would offer it as an additional section.

MR. VAN WINKLE. The gentleman is not aware that the section of Mr. Caldwell is pending?

MR. CALDWELL. I really, when I first rose, did not intend at all that my proposition should be offered now for consideration before the Convention. My object in rising merely was to give notice that there was such a proposition that would be submitted at another period and to ask members if they had not the proposition now to advise them that it was printed, that they might have it in the meantime and have an opportunity to consider it. I do not design at all it should be taken up this evening. Therefore I was a little surprised when the proposition made by myself was read by the Secretary, for I did not intend to offer it now for the consideration of the Convention; and therefore, to relieve the difficulty, I move we now adjourn.

MR. BROWN of Kanawha. I desire to ask that Mr. Smith be appointed on the legislative committee.

Mr. Caldwell withdrew the motion to adjourn.

MR. BROWN of Kanawha. That committee has now had the matter referred to it again and has it now for action.

MR. HALL of Marion. I trust we shall not change or make any arrangement of committees different from what they now are. I have no doubt of the valuable aid the gentleman would give on that committee, but at the same time I think our committees are well enough. I am very well pleased with the labors of the committees thus far, and trust there will be no changes made.

MR. BROWN of Kanawha. I am unable to conceive of any grounds in opposition to the motion. My only desire is that we should have the aid of Mr. Smith on the committee.

The motion was agreed to.

MR. CALDWELL. I move now the Convention adjourn.

MR. LAMB. I move to add the gentleman from Hancock to the same committee. We have one from the southern section. Let us have them distributed as it was before.

MR. CALDWELL. I must insist on my motion to adjourn.

The motion was agreed to and the Convention adjourned.

XXX. THURSDAY, JANUARY 16, 1862.

The Convention was opened with prayer by Rev. Robert Hagar, member from Boone.

After reading of the record,

MR. RUFFNER. I see it recorded in the morning's proceedings that the proposition of the gentleman from Wood, on a motion of a member from Ohio county was "referred back" to the Committee on County Organization. I apprehend that the word "back" is not properly used there, for it would imply that it had been previously in the hands of the committee.

MR. STEVENSON of Wood. I did not notice particularly the wording of the minutes; but I offered an amendment to the 9th section to strike out the word "fifty," in the 87th and 89th lines. I do not think it was in the minutes.

MR. BROWN of Kanawha. Mr. President, I believe when the Convention adjourned last evening there was pending a motion of the member from Ohio county to appoint another member on the Committee on the Legislative Department.

THE PRESIDENT. Will the gentleman from Kanawha please wait until the Chair has signed the minutes?

When the Convention adjourned on yesterday evening it had under consideration the motion of the gentleman from Ohio to appoint the gentleman from Hancock on the Committee on the Legislative Department.

MR. CALDWELL. Mr. President, I desire to say in consequence of the action of the Convention at the close of the session yesterday evening, that I do not wish at all to be regarded as discourteous to any member. When I made the motion to adjourn, at the instance of the member from Kanawha I withdrew the motion; and on reflection I think I did wrong in not withdrawing my subsequent motion on request of the member from Ohio in order that the question might be taken on the motion he indicated to add the member from Hancock to a committee. I merely rise to say that it was not done out of any discourtesy towards the gentleman from Ohio, but that I merely desired the Convention to adjourn and without reflection insisted on the motion. I regret I did not withdraw the motion so as to give the gentleman from Ohio the opportunity of making the motion he indicated.

MR. LAMB. Mr. President, that motion was made in some degree under misapprehension. I withdraw it. Though I shall be rejoiced to have the assistance of the gentleman from Hancock, I do not wish it to stand as my motion, sir.

MR. POMEROY. Mr. President, I wish at this time to call up a resolution offered on Tuesday evening and tabled by the gentleman from Marion to fix the hour of meeting at nine o'clock in the morning. I hope the resolution will be taken off the table and considered without discussion. I think the Convention is ready at this stage of the proceedings, with as much business as has accumulated, and I move that the resolution be taken up from the table.

The motion was agreed to.

MR. POMEROY. I now move to adopt the resolution, that the hour of meeting be nine o'clock hereafter. I think it plain to all we ought to meet at that hour.

MR. VAN WINKLE. I think, Mr. President, that nine o'clock is too early. We do not get a very full attendance at ten. I don't think it is worth while to change. The days are getting longer, and if we do change, I prefer half-past nine. That would save only half an hour. We ought to have a little time in the morning to take a little exercise or something of that kind. We sit now two and a half hours in the morning, more in the afternoon, which makes a pretty good day's work when it is all put together. I will move to substitute half-past nine.

The amendment was agreed to.

MR. STUART of Doddridge. The resolution is perhaps all right to call up some day in the future. This morning I was called into committee at nine, and in all probability would have to go on that committee again at nine tomorrow morning. I think it is better to wait until that committee have reported. Unless you do, I at least will be deprived of acting on the committee.

MR. VAN WINKLE. The resolution as amended now reads half-past nine. I will move to make it take effect after Monday next.

MR. STUART of Doddridge. Any time after the committee has reported. I expect to be on it tomorrow morning.

MR. VAN WINKLE. I thought the gentleman referred to his business in connection with the other house. I will offer that

amendment, to insert "on and after Monday next." That will give us a little notice, and we can make our arrangements to be prepared for it.

MR. LAMB. I certainly am in favor of anything that will expedite business; but it seems to me that meeting at even half-past nine will retard instead of expediting business. We must have time to prepare things in the morning before we meet in the Convention or we come here without anything ready. The time will not be lost, if you allow members half an hour or more in the morning to think about the matters that are pending in the Convention or to prepare themselves for acting considerately when they come into the Convention. I do not believe the change to half-past nine will at all tend to expedite business.

MR. POMEROY. The change now contemplated does not reach the point I wish; but I am willing to go for this change, and why we should defer it until next Monday is something that I cannot see through. These nights are somewheres in the neighborhood of 15 to 16 hours long, and why committees cannot meet during these long evenings must be for some reason that I would not wish to impute to this body. There is no man of good sense—and we have no other kind of men here—that wants to sleep sixteen hours. Now, there is becoming general complaint that this body only sits five hours out of twenty-four. Now, we merely wish to add a half hour. It is very evident to the President and every member that members will have their say-so, that there must be free discussion and that it must go on until the subject or strength of the members is exhausted before the vote can be taken; and why not add this additional half hour? If we are going to economize in regard to the salaries of officers to be created under the Constitution, why not economize ourselves. Why cannot every man be here by half-past nine? If the committees wish to meet, why not meet at night? Besides, the report of every committee is before us and we are at the close of a third week on a single report. When will we get through in this way? I hope the Convention will not postpone the matter. There are two days of this week yet in which we may save time. I am willing to extend all the courtesy we have ever extended to members in the legislature. We have a recess of three long hours in the afternoon. We do that through courtesy to them; and now why idle away from daylight to ten o'clock in the morning before we meet? Why may not we be going on with these discussions and why not meet in the morning when

everything is revived by the refreshment of the night and go on with the discussion? I am in favor of meeting at half-past nine when we cannot get nine.

MR. POWELL. I was in favor of the original motion, to meet at nine o'clock, and now in favor of the motion as amended and opposed to the amendment now offered. We certainly are consuming a great deal of time here, and while we are all enlightened by the debates and interested in them, I think we might meet sooner and get done and have more time. We will get through as soon as possible. Our Constitution should be submitted to the people; then it may come before Congress, if the people vote in favor of the Constitution. I hope that gentlemen, then, will vote against the amendment and vote for the resolution as it has been amended.

MR. BROWN of Kanawha. I do not wish to punish any gentleman, but I confess I am in favor of the earliest hour we can meet. Since it is impossible, it seems, not to do this without discommoding some persons, we must disregard the few. I know a few of us are members of both houses and find ourselves very much perplexed and find that discharge of the duties in both places to the full extent we would wish is entirely impossible; and I do not think the Convention ought to waste time on the few where it is impossible under the circumstances to accommodate ourselves to the action of this body entirely. It can though to some extent arrange it so as to a great extent avoid the difficulties. And I therefore think that since the gentleman from Doddridge will find himself almost equally discommoded by half-past nine, it is well to get the greater good that the greater number should adopt nine. So far as I am concerned, to split the hour does me no good and it may as well be appropriated one place as another. I certainly think we ought to use all the time we can now in the house. There are a great many suggestions and opinions to be introduced and prepared in the house. The main work has been done in the committees, but I feel some relief on this acccount now by the addition of another gentleman from the south section of the State to the Committee on the Legislative Department that I can be absent from that and attending elsewhere.

I desire while up to say, personally, that that is the chief motive inducing me—in fact the only one—to have the aid of that gentleman on the Committee on the Legislative Department. The apprehension that seems to have been caused elsewhere never entered my mind.

MR. HERVEY. I hope that the motion to postpone until Monday will not prevail. I hope this Convention will put its shoulder to the wheel and roll on this ball and finish this Constitution and submit it to the people. There is a serious responsibility resting upon our shoulders. While I believe every member is desirous of getting through as soon as possible, if we procrastinate this thing and sin away our day of grace, the people will hold us to a direct accountability. I am in favor of putting it through.

MR. STUART of Doddridge. I am in favor of the amendment offered by the gentleman from Wood and would say to the gentleman from Hancock that after next Monday morning if he will suggest five o'clock to me he will always find me here. But I desire to be in attendance on the Committee on the Legislative Department, and I have labors in other committees which occupy my time every night. It extends anyhow till twelve and many times till two or three in the morning. And I have asked the chairman of the Committee on the Legislative Department to meet me in the morning. You have sent back a report to that committee which this body had been talking on for four or five days. We want to harmonize it and I want to give them the benefit of my labor if I can. I will vote for the amendment of the gentleman from Wood and after that I will vote for five A. M.

MR. POMEROY. Whether I would or would not vote with the gentleman for five A. M., I am very certain the majority of the Convention would not and therefore the suggestion, although thrown out kindly, is not a practical one. We could not get the Convention here; though if the gentleman and myself were here we would form a very respectable convention—so far as numbers are concerned.

MR. LAMB. I merely wish to call the attention of the Convention to the fact that there is a report to be made from the Committee on Education, another to be made from the Committee on the Schedule; a report from the Committee on Fundamental and General Provisions was recommitted and they will have a further report to make—so that we are not by any means through with committee business yet.

MR. BROWN of Kanawha. I cannot concur with the gentleman from Doddridge to come here at five o'clock, for that I think would fail to attain the end; but I have no objection to extending the time if the gentleman desires till Monday, and after that I will meet

him at eight. I think that is an hour we can all attain. Therefore we had as well come at eight. And that lengthening of the session from eight till dinner will accomplish something.

MR. VAN WINKLE. The whole Convention has intermitted its session from half-past twelve to half-past three every day since it has been in session for the accomodation of the gentleman from Kanawha and others. Now, sir, there is an hour and a half if it was not for that fact that might be added to our diligence without any inconvenience to anybody; but while that state of things continues, while the legislature is in session and the members of this Convention are disposed to extend that courtesy to the members of it, I do not think we can make any change that is likely to be beneficial in the hour for beginning the morning session. Now, if personal convenience is the thing to be sought I am willing to come from half-past nine to ten and to sit right straight ahead until we get through for the day. I would rather sit from nine or ten until we complete the number of hours and go home and then you would not lose the time that is wasted now. But, sir, we are told the committees can do the work at night. The committees meet in the evening and sit till then, and then we have gone home and worked until two. Well, then to come up in the morning without a chance for a short walk, or to smoke your cigar after breakfast and be ready here, because somebody at home will say something! Well, sir, if my constituents do not know what my habits of business are, if they think I am inclined to take time for play when I ought to be at work, or if they think there are any amusements in this town to lead us away from our business, they are much mistaken. We are all grown up men, come to years of discretion, according to lot at least and if they cannot trust us to fix for ourselves the mode of doing business, they had better get another set and send them to take our places. That is my impression, sir, and this matter ought to be arranged to our inconvenience and disadvantage lest somebody out of doors should think they know better than we do how to arrange our methods of working. If we can arrange it to expedite the business of the standing committees and to accommodate members who are connected with other bodies and get along as well as we have done, I do not think there is any cause to complain. A mechanic can work ten hours at manual labor. The value of his work, the reward of it, depends chiefly on the time bestowed on it from day to day. The excellence of our work depends on other things—largely on the freshness and

intellectual vigor we can bring to it; on the thought we give to the various ramifications of it, and on the information bearing on it that we are able to bring together and digest for our purpose. The true economy in work of this kind is not in haste, not in denying ourselves sufficient time for the many investigations required; but in producing wise, efficient judicious provisions without any reference at all to the time necessary to do this. An ill conceived, ill assorted, inoperative and mischief-working Constitution would be dear at any price; a good one, judicious and beneficent in its provisions and permanent because it meets the requirement of the people, will be cheap at any cost. All thought of petty economies in such a connection is trivial.

It has been said by physiologists and physicians that six or seven hours a day of mental labor is as much as a man can stand for a great while. If we work five hours here and two or three in connection with the committees we are performing all that our doctors think good for our health, and those who wish us to do more are unreasonable, no matter whether in the Convention or out of it. I am willing to fix such hours as will be sufficient for the dispatch of business; and as much as the majority of members, I can adapt myself to most any circumstances that are named, but do not like to have changes made. And this mere idea that we are to be judged by the number of hours we spend in this hall is unworthy of our notice. No deliberate body with which I have ever been connected has confined itself more closely to the subject before it than this. There has not been a buncombe speech made in this Convention. I do not think any gentleman has spoken for the sake merely of saying something. I have noticed it from the beginning that every speech, everything that has been said, has been right on the business of the Convention. Now, sir, we have been getting along just as well as I expected we would or as well as anybody could. Our progress will be accelerated after a little. When the committee reports are all in, when these questions over which there are differences, such as the apportionment of the legislature, about which it is very hard to everybody, are disposed of, we might meet morning, noon and night and spend the time and perhaps get along very fast; but the members will find that the time that has been spent so far has been well spent and that the further we go on, the more rapid will be our progress. I think we can close the session within the time that was reported here.

MR. HALL of Marion. I, sir, moved this resolution some days

since because I was satisfied we had a great amount of talk that would be done and must necessarily be done; and I am like the gentlemen who have preceded me, I see no reason why our committees may not meet at night. And while the remarks of the gentleman from Wood are entitled to weight in that respect, yet in view of the fact that the labors of large numbers of the committees are practically over, I think that cannot apply hereafter. While it may not have been proper in the onset to occupy more time in the actual sittings of the Convention, I think now we may. I have no idea, sir, that this motion would be permitted—I know it was not moved with any reference to what anybody outside or anywhere else would say or think about it. I know that there is at least one member of this body who does not care anything about what is said outside or inside by members, people or anybody else in reference to this thing, because I am just ready to go home and do anything else if anybody is dissatisfied in Marion. I do not think that is the motive that is influencing this body. We do see and know, and did in the onset, that there would be necessarily a great deal of talking, and it takes time to do it. Whilst the labors of those who are upon the committees still engaged will be considerable outside of the hours that are occupied by the sittings of the Convention yet we have the opportunity of resting between times. When my friend speaks, I sit and listen and rest myself. It is true there is mental labor in this thing, because we are all interested; but still I think in view of the fact of the necessity that we get on as rapidly as possible—of course, never in such haste as to leave anything undone, but as soon as we can—I think it is the desire of all, inside and outside, the interest of all, that we should get on as rapidly as possible; and I trust we will adopt the half-past nine hour. I would have been very glad if we could have made it nine. I can understand and appreciate why the gentleman from Wood may feel that he has a right to urge the objection with reference to labors on committees. We all know how laborious he is. I apprehend he has such a reputation at home that he is not alarmed about that. We know he has a great deal of labor assigned in this body; and if it is too onerous he might be relieved and somebody else set to aid him if we could get anybody to fill his place. However, I am satisfied he will row his boat over, what hour we meet. I trust it may be the pleasure of the Convention to adopt the half-past nine amendment.

The amendment was agreed to and the resolution as amended was adopted.

MR. LAMB. Mr. President, the Convention had yesterday under consideration the 35th section of the report of the Committee on the Legislative Department. A motion was made to adopt the section as amended. We met after the recess, and the question on the 35th section was laid over on account of the absence of the gentleman from Kanawha. I gave all the explanation yesterday that I consider necessary and will not occupy the time of the Convention in regard to it.

MR. BROWN of Kanawha. The motion I believe that I made was to strike out after the amendments to the section had been adopted, to strike out the entire section as adopted. I believe that is now the proposition for consideration.

MR. LAMB. I suggested there would be no advantage in the motion to strike out at all, as the question could as well be put on the motion to adopt or reject. The motion to strike out requires the time of the Convention to occupy in taking two votes. Unless the section is stricken out. If your motion fails, then the motion to adopt comes up. The whole matter can be decided by one motion.

MR. BROWN of Kanawha. The only difference is an affirmative and negative vote. I have no objection to taking the one vote. I will as soon say what I have to say in the negative, as on the affirmative. The result is precisely the same. I have, sir, a very strong objection to presenting a work to the world (the State) when that is to be examined, criticised and discussed before the people, which carries in itself a double grant, to be presented in the attitude of first giving to the legislature all the legislative power of the State in the very first section in this report, and then to go on and in the second instance deal it out by parcels, identically the same thing. I would prefer to see this Constitution when it comes from the hands of this Convention be complete in all its parts, and after it was done once to be well done and not attempted a second time. It carries on its face to my mind a sort of deception on the part of the Convention. We adopt it; then what we have done once under the general grant requires to be specifically stated in particulars, or the power might not exist. That seems to carry on it a misapprehension of the very powers that the Convention have granted in the Constitution, and as the gentleman has well said, with the very simple fact, we after having given a general power go on and fertilize this with the other power of particulars;

which power does seem to preclude the idea that these other powers exist. Now having got a general grant, there should be no particularization of grants, unless you intend to particularize every grant in order that it may not afterwards be said they have particularized the powers they have granted, and this not being particularized cannot be held by the legislature. For the harmony of this Constitution, for the credit of the Convention, as I maintain, and to avoid this objection to particularizing one thing and not all, and the insuperable difficulty that if you attempt to particularize you must particularize all, because it does not lie in the wit of man to make a consistent constitution otherwise, requires that since we have given the general grant we must exclude all particulars. It is both wise and prudent therefore to attempt nothing but to give to the legislature all the powers not reserved from them and then the responsibility is on them to exercise it rightfully or wrongfully; and if they do it improperly, then they are responsible to their constituency. That is the objection I urge.

MR. LAMB. I assume the Convention will recollect sufficiently the explanation which I gave of the object of this clause. I will very briefly state it again.

It is that we have already adopted in other sections of the Constitution provisions that seem to render such a provision as is contained in this section necessary. If the 35th section is not there, it will be at least a matter of question and argument whether this general power of the legislature, so far as it regards officers, prescribes terms of office, powers, etc., of officers, in the cases mentioned in the Constitution, is not necessarily cut off by the principle that the expression of one is the exclusion of another. This is particularly the case in regard to removal of officers in consequence of the provision which you have adopted in regard to impeachments. It is a very fair argument in that case. You provide by the section in regard to impeachment that all officers may be removed in a particular manner. Does not that almost necessarily carry with it the inference that they can be removed only in that manner?

In order to obviate the difficulties of construction of this kind, this section is proposed to the Convention. It is proposed too, because I find similar provisions in the constitution of every state that I have examined; and the legislative power there rests on the same basis that it does in this Constitution. The constitution of every state bases this matter upon the foundation that, in the

first place, in the granting of legislative power to the legislature which the Constitution creates, provisions of a character similar to these are introduced into other constitutions and obviously for no other reason than because the constitution while vesting all legislative power in the legislature goes on and directs that certain officers shall be appointed, because it makes certain provisions in regard to terms of office; because it makes certain provisions in regard to compensation; because it makes certain provisions in regard to removal of officers, and it is necessary to insert a clause declaring that in cases not specially provided for in the Constitution the matter shall rest with the legislature. I think that the clause is probably necessary. Certainly it cannot be any very great objection to it if in order to obviate the possible difficulty of construction we add five lines to our Constitution which does relieve that difficulty. It is this clause, so far as the removal of officers is concerned, at least, that is certainly necessary if the clause in regard to impeachments remains as it is now expressed.

MR. SINSEL. The gentleman from Kanawha, it seems, is in favor of consistency. He was a member of the legislative committee that passed this first section that gives all this power to the legislature to pass laws, to remove these officers from office, etc. Now, I would like to know if that clause of the first section, taken in connection with the clause passed with the 37th section—why he as chairman of the judiciary committee should provide another clause for the removal of judges. Now if this first section passed by the legislative committee and by this Convention, and that too before we received the report of the judiciary committee, was all sufficient, why was this clause inserted in that report? Let us see what it says: "Judges may be removed from office by a concurrent vote of both houses of the legislature, but a majority of all the members elected to each house must concur in such vote, and the cause of removal shall be entered on the journal of each house. The judge against whom the legislature is about to proceed shall receive notice thereof accompanied by a copy of the cause alleged for his removal at least thirty days before the day on which either house of the legislature shall act thereon." Now, if this clause proposed in this 35th section is unnecessary, is not the clause I have just read much more so? I think so. Well, now, the 37th section is liable to this interpretation that all officers or judges might claim before the magistrates if they were indicted for maladministration, corruption or any of the crimes mentioned

therein that the legislature had not the power to pass such a law, and they would turn to the 37th section, in the legislative department, and there show that they must be tried by the legislature, that they must be impeached. That is one of the difficulties that would arise. Innumerable cases of litigation would grow out of this very clause; but if the 35th section is unnecessary, it does seem to me the 13th in the report of the Judiciary Committee is equally so. I think if the Convention wants to remove all doubt as to what is meant, they had better adopt the section.

MR. LAMB. I want to call the attention of the gentleman from Taylor to a provision in the report of the Committee on County Oragnization, the 6th section, page 4: "They (the legislature) shall further provide for the compensation of said officers by fees, or from the county treasury; for their removal, in case of misconduct, incompetency or neglect of duty; for filling vacancies not herein provided for, and for the appointment, when necessary, of deputies and assistants, whose duties and responsibilities shall be prescribed and defined by general laws." This section, if it is properly drafted, may save the trouble of repeating this provision over and over again in half a dozen places in the Constitution; and all the committees seem to concur that something of the kind is rendered necessary by the other provisions of the Constitution.

MR. BROWN of Kanawha. The gentleman from Taylor, rather, it seems to me, has gone out of his way to war upon me because I am opposing this amendment and with having as a member of the Judiciary Committee reported a similar provision, as he supposes, in the case of judges. Now, however, I might have been for the case there and against it here, I do not see that that has much to do with the case. But, sir, I am prepared to defend the position there and here. If the gentleman will look at that provision a little more carefully he will see that it has no relation to the subject under consideration; that that is establishing in the legislature not a legislative power but a judicial tribunal. This is conferring on the legislature the right to make a law which has already been granted. Because I understand the right to make every law is the right to make any law; and the right to make every law not prohibited has already been granted. But this first section does not grant to the legislature the right to sit as a court to perform judicial functions, with power of impeachment. To make the senate a court and the house the accuser is establishing in the legislature a different characteristic and power from that

of ordinary legislation; and therefore it was highly proper in the judiciary committee, whenever it undertook to submit the cause of a high officer in the State to a jurisdiction that has not been prescribed by law to fix it in the Constitution and to throw carefully guarded securities around the individual to provide that the cause of impeachment must be stated, the party must be notified in time sufficient to give an opportunity to defend himself; that the senate shall sit as a court, and be on oath; that the house shall be the accuser, and shall have a fair opportunity for that purpose. There are various securities there against the mal-administration of justice in this judicial function given to the legislature. This I understand is only providing in this legislative department that the legislature may make a law governing or removing officers from office; and who can deny that every legislature has the right to make a law to remove any and every officer from office whenever his conduct shall be not in accordance with the requisitions of the law? The right to make any law declaring anything to be a duty or a prohibited act involves also the right to remove that officer from his office. The legislature makes general laws, and it cannot punish him individually but by taking away from him any franchise that has been conferred if he violates the law on which the holding is made a contingency. And there can be no question about the fact that unless the legislature has power to do everything that is proposed to be in this 35th section it has no power whatever to pass any law; and that you are establishing a legislature that is a mere idle concern called together for no purpose but to carry out these individual grants of power to it. That is not my idea of the legislature of any state in this country or the legislature we are proposing to call into existence. My wish in this is to give to the legislature every proper power a legislature ought to have, leaving it free to exercise those powers, restraining it only in that which is necessary to guarantee rights and against mal-administration. And I maintain as a general principle that whenever we depart from that rule the evil is you add no more power by particularization; but you only limit and restain by implication not particularly stated but which are equal under the general power granted, and that you are adding nothing to the efficiency of the legislature, even endangering its power by implication while you destroy the harmony of your Constitution. It is in effect a work of supererogation in this section; and nothing that has been claimed to be conferred on the legislature in it that I can see that is not already granted in the first section and more too.

MR. LAMB. I only want to make a single additional suggestion in regard to this section, so far as it provides for removals from office. The gentleman proceeds on the principle that all legislative power is in the first clause of the report granted to the legislature which is hereby constituted. That is correct. I wish to cite, however, to the gentleman authority of the very highest character. The Congress of the United States first assembled under the Constitution of the United States, composed in a great measure of the members who formed the Federal Constitution, embracing among its members such names as Madison. In that first Congress the question of removal from office came up. It was deliberately and most elaborately discussed, Mr. Madison himself taking a principal part in that discussion. Mr. Madison contended throughout that removal from office was not a legislative power; that removal from office was necessarily an executive power. And the decision of that Congress was that removal was an executive power. Under that decision the Constitution of the United States has been worked ever since. The Constitution of the United States makes no express provision for the removal of officers. It provides in one section that all the legislative power of the United States shall be vested in Congress; in another section that all the executive power shall be vested in a President. It has made no provision in regard to the removal of officers. The question was then presented distinctly: Is this power of removal from office included in the legislative power, or in the executive power? That Congress, the first Congress of the United States accepted and supported the principle of Mr. Madison, that removal from office was an executive and not a legislative power.

Here is one of the questions, in addition to the other, that we get rid of by this section. The other—the effect of avoiding what I take it is a necessary conclusion from provisions that you have engrafted in this Constitution, would be a sufficient reason; but this reason would also be a sufficient reason for relieving us of this difficulty. The first Congress expressly rejected the law containing a provision that by inference merely seemed to grant power to the executive. The law was proposed in such a shape that it seemed that Congress was granting the power to the executive to remove officers. They did strike out the clause that seemed to grant that power for the express purpose of carrying with it the implication that the power was granted to the executive of the United States by the Constitution of the United States and that Congress had not the power to grant it; that it was an executive power vested

in the executive by the Constitution of the United States; that Congress had not the power to interfere with it. They would not suffer a law to pass that even seemed to imply that Congress was granting this power to the executive. Such I know to be the fact, for I investigated that matter at one time most carefully, reread the whole debate on the subject from the beginning to the end of it.

We get rid of that question, anyhow, by this clause; and the gentleman's inference is not so clear that so far as regards removal from office it would be necessarily within the legislative power.

MR. BROWN of Kanawha. I have listened with pleasure to the illustration given by the gentleman from Ohio; but I think that he has wholly misapprehended the application of it to this case. He forgets, in the first place, the character of the Government of the United States is wholly and totally different from that of a state government; that the former was created by the grant of specific powers in the Constitution, and that no powers are there granted that are not specially named or those incidentally arising out of grants; that the whole government in its frame and structure and nature is the very antipode of a state government. The one has nothing except what is given to it; the other has everything except what is taken from it. That is precisely the character and nature of the distinction between the two. One has nothing that is not specifically granted or necessarily arises by implication; the other possesses everything that is not specifically reserved and withheld from it.

But, again, the officers alluded to in that case, as you will recollect, in the character of that government, the officers are appointed by the executive. The appointees can be removed without assigning any reason wherefore. He simply notifies them your services are no longer desired and the gentleman walks out of the way and gives place to a better officer. That is not the case with a state officer. That is one distinction between these two classes of governments, that an officer under the Government of the United States holds his office at the will of the executive and he alone is held responsible to the people for the conduct of the officers in the government, except the judiciary; and they are a different department provided for in the Constitution itself, and therefore it was argued that these were within the executive control and that he who was responsible for their appointment and continuance in office was to be held responsible for their removal if that was desired.

MR. LAMB. Excuse me, there is nothing in the Constitution of the United States that says the officers of the United States shall hold at the pleasure and will of the Executive. There is nothing in the Constitution of the United States in one shape or another in regard to removal from office except the two small provisions, one that the legislative power of the United States shall be vested in the Congress, the other that the executive power shall be vested in the President of the United States. The result at which the Congress arrived was simply the construction of these two clauses.

MR. BROWN of Kanawha. Very well, sir; I do not see that that changes the case in the slightest degree. The executive is the appointing power and has ever been held to hold the removing power. But I imagine, sir, it has never been held at all that the legislative power cannot pass general laws to control and prescribe the duties of the officers, to affix penalties for their failure to discharge them, and to make it obligatory on the executive if he continues an officer who disregards that a violation of his duty. I imagine it is not contemplated section at all to give to the legislature that executive character of a government, to follow out and ferret out every delinquency in the officers of the State and remove them from office. That is not what is contemplated. That is rather an executive or judicial office. That the object that this is an attempt to confer is to give the legislature the right to prescribe by general laws what shall be the duties of the office, what the officer shall perform, and if he neglects it he shall be punished for it; and it is to be for other departments of the government to carry that law into effect; to test by the fact whether any officer has violated his duty and will prescribe that either the courts or the executive, or some other department is to carry it into effect and remove him. All these removals are to take place before some of the tribunals of the land, and they will enter the judgement that he is to be removed. The man who has violated his duty, until some proceeding under the law to take his office from him is not divorced of his office. And that is not contemplated at all in the difficulty that arose in Congress; for it is not proposed to turn the legislature into an inquisatorial body to hunt up every delinquent officer, but to prescribe by general laws only what shall be the officers' duties; and if they will not discharge them, on trial and conviction of the facts they shall be removed and another put in the place. That is a legislative power that is granted us in the

first clause of the Constitution if anything is granted us, then, the right to make laws prescribing the duties of all these officers and also fixing the penalties and prescribing the tribunals that shall investigate and remove them if they fail to discharge them. I think the gentleman has wholly failed to show any defect in the general grant already given.

MR. VAN WINKLE. The insertion of one word twice would, I think, remove the objections to this section—would remove mine, at any rate; and I will ask the attention of the Convention to the fact that what is provided in this section is only such cases as are not otherwise provided for in the Constitution. If there is any particular class of officers whose cases could not be committed to the legislature under these provisions, why that ought to be anticipated in the Constitution itself. There is this to be considered, sir, that by this Constitution all these state officers nearly will be elected by the people; and to give to the legislature an arbitrary power to remove an officer elected by the people would be going, I think, too far. That is to say, that if the legislature could by a joint vote remove an officer elected by the people from office it would be rather a trespassing on the rights of the people. In the clause read by the gentleman from the report of the Committee on County Organization, the principle introduced there is that wherever the legislative power is invoked in that report, the legislature must act by general laws. That is to say, it is not to be allowed to make a law to suit a particular case. It must provide the law beforehand, and then the case will be adjudged under it. I apprehend that the gentleman from Ohio is right in his inference from what was decided in the case he adverted to; and that if this is left an open matter—if there is nothing said in the Constitution as to the right of removal or who shall remove or appoint officers, that appointed officers, at any rate, would be removed by the executive. That this is not a Branch of the legislative power is what I understand to have been decided at that time; but whether that decision embraces officers elected by the people is very doubtful, because I do not know that there are any such except the President and Vice President under the Constitution of the United States. My impression is that it refers only to appointed officers, and under the government of the United States appointments are made by the executive; and there is an old maxim somewheres to the effect that he who appoints may remove.

But I think it would obviate all of the dangers that might arise out of this section to insert the word "general" before "laws," so it would read: "Shall prescribe by general laws the terms, etc." This in cases not already provided for—the terms of most of them are provided for, and I believe the terms of all are limited by a general provision to not more than four years—and the manner in which they shall be appointed and removed, then the clause that has been adopted (or is it pending?) they may provide by law for the removal of officers or otherwise.

THE SECRETARY. It is adopted.

MR. VAN WINKLE. Well, to amend that further by saying they may provide "by general laws for the removal, etc." But it is as well now to consider for the future the operation of general laws in reference to this where other things may readily come up. That is a modern improvement, I think, in reference to legislation. The amendment of the gentleman from Marshall which he was about offering last evening proposes to throw several things there under the operation of general laws; and its tendency is to take from the legislature this private legislation or legislation for special cases, which is always productive of evil and which throws into the hands of the legislature a sort of patronage, a way to gratify individuals, the temptation to do which may be too strong to resist. Now, if all these things are provided for by general laws—for as I said in reference to another matter yesterday, the legislature are to sit down to make a law to fit all possible future cases as nearly as possible. That law is to be based on some principle in connection with the matter. A general rule is to be devised and there is no temptation to make the rule so as to fit particular cases, for the supposition is that at the time they make these general laws the particular cases will not be before them and perhaps would not occur. I should dislike to place in the legislature the power of arbitrary removal from office; as much opposed to that as the gentleman from Kanawha can possibly be. But if it is simply that in reference to officers not otherwise provided for in this Constitution the legislature shall pass general laws defining their terms of office, their compensation, what their duties shall be, and also how they shall be removed for misconduct and neglect of duty, I apprehend that no public evil can grow out of it. There will be the law on the statute-book when the party is elected to office and it will be a part of the conditions on which he takes the appointment, and if he is condemned under a law of which he has had

due notice, he cannot complain, nor will the public be inclined to complain, if when the law is first adopted and it is approved by them, if its provisions have operated harshly in any particular case. They cannot justly complain of any general law if the law itself is a wise one.

I will, therefore, move to change the section by striking out the word "law" in the 223rd line and also in the amendment heretofore adopted and insert in both blanks the word "general laws." That amendment, sir, on the rule of perfecting a section as far as we can before the final vote on it I apprehend will meet the approbation of members. The question will then recur, of course, on the whole section.

THE PRESIDENT. The question is on the amendment.

MR. LAMB. I suppose that amendment should be adopted by general consent. It is only to render more explicit what is intended anyhow.

The amendment was agreed to.

MR. PARKER. I wish to say one word. I differ with the gentleman from Kanawha in relation to the division of powers of our system of government. I understood the gentleman from Kanawha to say that whatever power the people—which is, I suppose, conceded by all to be the source of all power—whatever power the people have not conferred on the Federal Government they have conferred—all else—on the state government. Well, now, I differ entirely with the gentleman on that point. I hold that the state government is as much limited in its powers as the Federal Government. The people are the source of all power. The government derives no power but what is granted to them by the people, and the grants of powers are to be determined by the constitutions, which are the letters of attorney, the only things that convey powers to these bodies—as much to the state government as to the Federal Government. It has been said, and probably well, that the Federal Constitution requires a stricter construction than the state constitution. That is a question in my mind. I have never seen any good reason why the one charter, the one power of attorney, should not receive the same construction as the other. And when the exercise of its powers, either Federal or State, are in derogation of the rights of the people, which is the source of all power, then I say I see not why the power of attorney of one agent should not receive the same construction as the power of at-

torney of another agent; because the powers not granted to either of these governmental agents remain with the people.

Now, suppose we have no state constitution, what is the result? Where is the power? That power is in the people. Take away the constitution, the letter of attorney, the governmental letter of attorney is cancelled. In western Virginia, the state by its act of secession, swept it away and the power is in the people. Now, what power do we grant in the Constitution we are framing? That is the very thing we are settling here. What power do we, the people—the source of all power—give to our state government? Just what we choose. This Constitution is to tell what we give up, and what we do not give up in express terms or by necessary implication remains with the people. There can be no doubt about these principles. They are the great principles that lie at the bottom of our government; they are the principles of the fathers of this government.

One word. I will read one amendment to the Federal Constitution, drawn, I believe, by Mr. Madison:

"ARTICLE X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Now, if the people had not any power left in them but the states had the whole that the Federal Government had not got, what is the use of saying anything about the people? Perfect surplusage and unnecessary. There is the division of power. The state government has what we choose to give it by framing our state constitution.

THE PRESIDENT. The Chair would remind gentlemen that the question is really on the adoption of the section, and everything irrevelant and not appropriate to the adoption or rejection would not be in order.

MR. PARKER. I do not wish to deviate from the point. The question is now on the section. Now, we come to the 35th section. The question is whether we want it or not (Merriment). In our first section, as far as we have gone, the legislative power of the State of new Virginia is vested in the general assembly composed of two branches—the legislative power. Now, what is it? Why that legislative power is just what we in the Constitution declare it to be. It extends to just those subjects, is just to that extent that we have declared it to be in the state constitution; and no more. No

doubt about that. That is because we say the legislative power of the State of West Virginia shall be vested in a legislature. It certainly does not carry the inference that we empower the legislature, clothe the legislature, with all power, with power to make just such laws as it chooses. Certainly that cannot be the inference taking the whole state constitution together; and the question is, to what subjects, on a fair construction of the whole of this instrument, do we intend the legislature to extend and no further? It goes no further. It cannot. Therefore, it seems to me that this section is certainly necessary. "The legislature in cases not provided for in this Constitution." Well, that implies that the cases here provided for are not elsewhere provided for in the Constitution. Of course, where it says the legislature shall have power, why it has it; but there are some cases where it is not specifically pointed out. Therefore, it says that in cases not specially provided for the legislature shall have certain powers. Well, now, without this, the legislature in those other cases that lie outside of those specific provisions would not have any power to touch them. The object of this is to give them that power outside of those specific cases. Therefore it would strike me that it is very important; and, as the gentleman from Ohio remarks, it is in all state constitutions that ever I see some such general power; and therefore it is highly proper to be retained as reported by the committee with the amendment.

The question was taken and the section adopted.

MR. LAMB. This completes, I believe the report of the Committee on the Legislative Department, except as to the single question of the apportionment. The committee met on that subject this morning and had the matter under consideration; but there not being a full attendance of the committee no action was had. I beg leave to take this opportunity to notify the members of the committee that we have agreed to meet this evening at seven o'clock at the room across the way, and hope that every member of the committee will be present.

MR. POMEROY. I believe the oldest report, as reported in order, if I was informed correctly by the Clerk, would be the executive report; and without attending to the amendment offered by the gentleman from Marshall—which will come up because all this whole report will have to come up to be prefected—I would move to take up the report of the Committee on the Executive Department.

THE PRESIDENT. There is a motion of the gentleman from Marshall already pending.

MR. CALDWELL. I was going to observe that so far as the consideration of that amendment proposed by myself, I am ready to take it up. My opinion is that the Convention had better proceed to the consideration of the amendment, if it is the pleasure of the Convention. And if such is the pleasure of the Convention, I would ask them to hear me in a few remarks.

MR. VAN WINKLE. If that amendment pertains to the legislative department, the proper time for its consideration would be now; but I was about to rise on the remark of the gentleman who proposed to take up the report of the Committee on the Executive Department, to ask the Convention to take up as next properly in order the report of the Committee on County Organization. It strikes me there are matters there, and the whole thing to a great extent must be a novelty, because it proposes radical changes which may render necessary essential changes in some of the other reports. The reports on the executive and judiciary may have in some respects to be conformed to what may be adopted under the head of County Organization. I mention it now, not interfering with the wishes of the gentleman from Marshall but rather, as it were that all parties may reflect on it, that we consider the importance of having this report discussed before the others.

THE PRESIDENT. There is a motion of the gentleman from Marshall, and also a motion of the gentleman from Harrison before the house that perhaps would come in their turn if we take the report up.

MR. VAN WINKLE. Well, sir, I move, if the gentleman from Marshall has not made the motion, that his proposition be taken up.

In reference to the question of order that arose yesterday in which he made some remarks I believe I was partly wrong about it. I treated Mr. Lamb's additional section as an amendment to the report of the committee. I do not remember whether he offered it in that form or not, but my impression is now, sir, that additional sections offered by any gentleman are in the same condition precisely as if reported by a committee, and that the section offered is the original paper; and that, therefore, in that view the amendment of the gentleman from Marion last evening, the second amendment after the gentleman's proposition would have been in order

contrary to what I then thought. It is only of importance that we may know before we start upon it whether that will be the ruling of the Chair. Will the Chair consider this as an original proposition offered?

THE PRESIDENT. The Chair was under the impression that there was an error in the decision of the Chair last evening making the motion of the gentleman from Ohio an amendment instead of a distinct section and now inclines to the opinion that the ruling on the motion of the gentleman from Marion was right and proper and would so decide in future. This view is given that gentlemen may understand the nature of their motions, or the opinion of the Chair about it, hereafter.

MR. VAN WINKLE. Will the Chair excuse me? My attention was called away, and I did not understand what the decision was.

THE PRESIDENT. The Chair concurred with you in that matter.

MR. VAN WINKLE. I expect the gentleman from Ohio misled us by calling it an amendment.

THE PRESIDENT. The question is on the adoption of the section offered by the gentleman from Marshall.

The Secretary reported it again as follows:

"The legislature shall pass no special act conferring corporate powers, other than for banking or for municipal purposes, or when the object cannot be attained under general laws; provided that the power of municipal corporations to tax and incur debts may be restricted by law.

"Corporations, other than corporations for banking or for municipal purposes, shall be formed under general laws, but all general laws passed pursuant to this section may be altered or amended by the legislature from time to time.

"The property of corporations created under general laws shall be subject to taxation the same as the property of individuals.

"The right of way may be granted by general laws to corporations, provided the same shall not be appropriated to the use of any incorporation until full compensation therefor be made in money —the amount of compensation to be ascertained in a court of record, in such a manner as shall be prescribed by law."

MR. CALDWELL. I ask permission, Mr. President, to submit a few remarks in support of that amendment. I think, sir, the first paragraph and the second paragraph should be considered together.

The first proposes to forbid the legislature from enacting any special laws conferring corporate powers. Without the second clause, sir, it might be inferred the legislature would not have the power of passing any general laws on the subject; and therefore it was, sir, that I thought there was propriety in inserting the second paragraph. As to the propriety of forbidding the legislature from passing any special laws on the subject of conferring corporate powers, I beg leave to call the attention of this Convention to one or two facts. My object, sir, in having that provision engrafted on the Constitution is to cut off a very fruitful source of legislation. It is known to us all, sir, that at every session of the Virginia Legislature applications for the incorporation of railroad companies, bridge companies, turnpike, mining and manufacturing companies were made, to the waste of the time of the legislature and at the expense of the state, and thereby encumbering our statute books with such laws. If we take into consideration that there is scarcely one out of twenty or I might say fifty, grants or chartered rights that have gone into organization, and when we consider that these powers of incorporated companies can be and are attained as well by general laws as by these private laws, I think there is propriety in prohibiting the legislature and cutting off this fruitful source of legislation.

Another view, sir. I think it is manifest to every one that all these incorporated companies could rest upon an equal and the same footing; that no one corporation should have advantage over another. We know very well how industrious some persons are who scheme and are desirous of getting up an incorporated company, procuring the services of some prominent attorney to draft the bill in their own home perhaps; that bill sent to the legislature, sir, and by means of a lobby, members and others, a bill granting favored privileges is enacted by the legislature. I think, sir, every railroad company, bridge company, turnpike or insurance company or any other company deriving advantage over another, should all rest on the same and an equal footing.

It is for these reasons chiefly that I propose to prohibit this power to the legislature of the State. My remarks, sir, are confined to the first two paragraphs, without desiring to extend them or occupy much of the time of the Convention. With respect to the next paragraph there is one thing, however, in relation to municipal corporations to which I will call the attention of the Convention. It also requires the legislature to prescribe the amount of taxes that any municipal corporation may lay, the amount of

debt any municipal corporation may create. Now, sir, we know, I know the evil in my own little town of taxation, of a debt having burdened tax-payers of our town; and I think there ought to be a restriction, that the legislature should have the power of restricting as well as that of incurring debt on the part of the corporations that we create. I next refer, sir, to that portion of the amendment in relation to the taxing of corporations as well as individuals. Perhaps, sir, under the report of the Committee on Finance and Taxation there might be no necessity for those two lines which comprehend and embrace this power. If I recollect aright, sir, the report of that committee gives the power to tax all property equally, and I would infer, sir, that the property of a corporation would become the subject of taxation as well as that of individuals. If, therefore, it is the opinion of the Convention that there is no propriety for this particular branch of my amendment, I have no objection at all to this being stricken out.

The last portion of the amendment is in reference to granting the right of way; that compensation to the land-holder should be paid in money previous to the corporate authority exercising or in any way assuming authority over the property. That it should be paid for in money I think is clear to the mind of every one. Now, sir, I understand that these incorporated companies have located their roads and that they may, perhaps, under the laws of Virginia as they exist now by the appointment of commissioners to condemn ground for their purposes, they may make application to have those commissioners appointed and take possession of the ground, but months or years may elapse previous to the action of this commission because of litigation in the courts between the company and the land-holder. In the meantime, without regard to this decision having been made they go on with their work of making the grade and to a very considerable extent damage the land-holder's property previous to the land-holder ever receiving any compensation until something may occur to this company by which they are rid of his suit. Financial matters may involve the company so that it will be required to suspend its work, when it has in fact committed damage to a considerable amount to the property. Therefore I think there is a propriety in providing that the land-holder shall be compensated in money previous to the incorporated company exercising any rights over the property of the land-holder. I had intended also to say that the land-holder should be entitled to not only a fair compensation for his land, as might be determined in manner pointed out by law, but that he should

have his compensation for his land beyond any benefit that might be derived incidentally from the improvement of the balance of his property. Now, when you, members of this Convention—the legal members—look at the present statute of Virginia you see that the land-holder is to be compensated for the land occupied and then the commission is required to ascertain what are the back benefits resulting to the land-holder from the opening of the road; and taking into consideration the damage that is done, to the residue of the tract of land not occupied by the railroad. My idea is that he should not only have compensation for the land occupied by the railroad, but the damage done to the residue of his tract without reference to any back benefits he may derive from the opening of the road; because these according to my experience are almost always imaginary. It is impossible for any five or twelve men to ascertain what the benefits shall be. It is matter for the imagination. It cannot be ascertained, sir, until the road is made and worked perhaps for years what the benefits will be derived from the making and working of that road. But, sir, I am content to leave this matter with the legislature, with saying simply that the compensation shall be paid in money before the company, organized under general law shall assume any control of the property at all; leaving the legislature to determine whether these benefits shall be a consideration or not.

These are about all the views I intended to express at present in support of the amendment.

MR. BROWN of Kanawha. I must urge against this amendment the same reasons I have urged against others, because it seems to me liable to the very same objection. "The legislature shall pass no special act conferring corporate powers, other than banking or municipal purposes, or when the object cannot be attained under general laws." That is not liable to the objection I have urged against some other sections that have been adopted. "Provided that the power of municipal corporations to tax and incur debts may be restricted by law." To this section I urge a specific objection. Here is a prohibition on the legislative power. If it is the intention of the Convention to prohibit the legislature from exercising its legitimate functions, then this clause meets the case. Here is a specific restraint on the power of the legislature. The question thus addressed to our consideration is, Is it wise to limit the legislature? What good is to be attained by the restriction? There is a distinction made, and from the very distinction

I will argue that there is a reason for not making this restriction. The legislature, says this clause, shall pass no special act conferring corporate powers, other than for banking or for municipal purposes. Why should banking corporations be put on any special or favored ground other than other corporations? Why shall the banking corporation, be permitted to be granted by the legislature but a railroad corporation, for the internal improvement of the country, shall not be permitted? It seems to me this discrimination is rather against the interests of the country than for them. Of all the corporations within the limits of the land, those that look to internal improvement by combinations of capital under the guaranties of a corporation are the most for the public weal. It is said that is to be supplied under general laws; but, sir, greater difficulties arise in this case than in any other. We have general laws now authorizing the incorporation of a mining company to operate in some particular locality by a proceeding in court, and that is all right. I do not wish to restrict the legislature in that particular from granting a law, because the legislature has the general power to make all these laws, to require a party to go into court instead of going to the legislature for a charter. But if you will notice, the legislature in this state has wisely guarded that that shall not apply to those corporations that are general in character and which are to extend in their operations over a large extent of territory and through many counties and large communities. It is confined to these corporations that seek to operate for private advantage and not for the public, to some particular locality, and it will therefore be known to the court that has jurisdiction of the case, that the whole case shall be brought fairly and properly within the provisions of the law. So in the case of mining and manufacturing establishments. All may be brought within this general law, and very properly. But that is not restriction on the power of the legislature to grant a charter of a general character if they see fit. The legislature may very wisely require the parties by law to come into these jurisdictions to extend a charter; but then it does not limit the power of the legislature to grant any similar case if necessary. But this section will prohibit it from granting any railroad charter. They are ordinarily extended by the legislature for public companies, given for private.

If there is anything that commends itself to my mind, it is to preserve in the legislature the power of granting charters for internal improvements. It is, that to throw it into the hands of any other tribunal is to make it local in its nature while it is

general in its character. Could we get a charter to-day in the counties through which the Baltimore & Ohio Road passes? Ohio might grant it; the next county might refuse it. Again, if you place the whole of our improvements in the hands of a general law, what is the result? From that very hour you take from the legislature the right and power and control the interests of the State. What do we have now going on in the legislature but controversy between two parts of the state and between two great corporations one partly in the state and the other out of her reach, demanding the right of way across the territory of the state, one to add to the franchises it has obtained; the other which it has not obtained. If you vote to take this control away from the legislature, you at once give up the rights of the people. The action of any smaller section or municipal body that may choose to dispose matters as they see fit, and having complied with the provisions of the law that we made when nobody foresaw its action, you could never disfranchise them. It seems to me therefore that this is an attempt to limit the legislative power in the case of the representatives of the people in a most dangerous essential. For the reason then that I can see no ground of making a distinction between corporations, I must oppose it; and for the reason that it takes out of the hands of the conservators of the public weal, the legislature, and places these interests in the hands of some particular local jurisdiction that cares nothing about the general interests of the land, I must oppose it. The other provisions are liable, as I stated before, to the abuses I urged against the other section. They are right in themselves except that this is but a repetition of power already conferred. "That property of corporations created under general laws shall be subject to taxation the same as the property of individuals." The legislature can pass such a law; and we have passed a provision, I believe, in some of our reports that taxation shall be uniform. I have no doubt such a provision will be passed if not yet done, and we can cover this case.

There is another provision here that provides for the compensation of persons whose property has been taken by any corporation. Well, it provides that the right of way can be granted by general laws to corporations, provided the same shall not be appropriated to use "until full compensation therefor be made in money." We have adopted a provision in fundamental provisions that private property may be taken for public uses on just compensation. That covers this case as I understand? Therefore it would be unnecessary to repeat it in a specific clause. I presume it will

be the policy of the Constitution not to tolerate the capture and appropriation of private property whatever to public use without the consent of the owner except on just compensation. That is a provision of the Constitution of the United States and I do expect the same provision is in the constitution of every state in the Union, and as long as liberty lasts in the land, I presume it will continue to be so. Without that general proposition, I should vote for this most cheerfully. With that general proposition it seems to me this proposition is unnecessary. "The amount of compensation to be ascertained in a court of record in such a manner as shall be prescribed by law." That is a matter for legislation. Again, the Constitution providing that private property shall not be taken for public use without compensation, the mode by which proper compensation is to be ascertained is always a matter for the legislature; and if this is legitimately a legislative power, there is no need for any specially delegated authority in that particular case. With these views, I find myself compelled to vote against the whole proposition.

Mr. Parker arose.

MR. SOPER. I wish to propose an amendment. The amendment I propose is to strike out of the second line the words "banking or." I believe, Mr. President, it has been truly stated by the gentleman who introduced this proposition that one of the great objects in having general laws is to relieve a large portion of the business otherwise falling on the legislature. Another object, I apprehend, is, sir, to place individuals upon an equality, whoever may have a desire to combine their capital for special purposes. It is, sir, with this view that I ask that the words indicated may be stricken out. If there is any portion of our legislation which wants so much guarding it is that in relation to banking; and the time will come in this State when bank charters will be sought after probably not only from individuals within the State but from individuals from outside the State. As we all know there is no power in this country that can be exercised so fatally, and benefically also, as the use of money, the power of capital. Now, the difficulty of leaving this matter of banking with the legislature is this: it will be controlled by political preferences and it will be used for political purposes. In this point of view, sir, it is injurious to the community at large. That has been the history of legislation in other states and it will be the history in this State unless we can adopt some general law for the organization of these

banking institutions and prevent it. If you pass general laws by which men can go into banking operations, then so far as political preferences are concerned that objection does not exist, because any man or any set of men who will come within the scope of these general laws will have a right to engage in the banking business, and it is placing that branch of business on an equality to all the people in the State. That I suppose to be the controlling reason why if it is possible we should place the granting of bank charters upon a principle that it would be equal throughout the whole portion of the State.

There is another view, sir, in relation to this banking operation. If you leave it open to the whole community, you do away with what is called moneyed monopoly. If you leave it exclusively to your legislature you may establish your bank in Wheeling, the mother bank, but she may get such influence and authority as to establish her branches in every county in the State. If you should do that, sir, she would have the power of controlling such interests as would probably be very seriously condemned hereafter. I know very little about the act of incorporation. I have never had occasion to examine it, sir, and I know very little about it; but I do recollect when the great struggle was in this country between the monopoly of the Bank of the United States and the power which the state banks exercised in opposition to it, and I know it was there a struggle, in a great measure, for political power between the friends of the Bank of the United States on the one side and the friends of the banks of the different states on the other, because the great power of the one had a great tendency to hamper and control the power of the weaker.

But, sir, if you have your general laws the banking institutions under those general laws will be separate and independent; and it makes no difference how many of them we have in the State provided the legislature only guarantees and protects the bill holder. That is as far as I think the legislature ought to go, and that is as far as the people ought to ask protection; and this undoubtedly can be done. The bill-holder may be protected; and then let gentlemen enter under these general laws into the banking operation, as many and wherever they please, use their own money and in the way they please; only have it so that they will be brought into competition with each other and dependent on the public, the public will be benefited by them.

It is for these reasons, sir, briefly stated that I ask to have the words "banking or" stricken out; so that if we should adopt

the proposition of having general laws these banking institutions may be controlled by the same general laws as any other incorporated companies.

MR. VAN WINKLE. Mr. President, I am certainly in accord with the spirit of this proposition; but I do not think it is precisely what we want; nor am I prepared to say at this moment precisely what we do want. It strikes me, however, that at least the legislature should have power—every government should have the power—to pass general laws for the incorporation of all these institutions; that is, pass laws by which any number of persons associated together for the purpose, under such conditions, of course, as would be imposed by the same laws as by that act would give the public notice of it in some way to be prescribed by the laws, to become a corporation if they so choose to do. This would be in accordance with the remarks I made on another subject this morning in favor of taking a great deal of this private legislation out of the hands of the legislature; and I am very much in favor of taking away from them as much of that kind of business as possible. If we could imagine that all private applications that are now made to the legislature could be answered beforehand by general laws adapted to the purpose, we should have reached a state of things which is a great desideratum that would prevent many of the evils which now result from every session of a legislative body.

In reference to the particular amendment under consideration, I think I would favor it. If we make banking an exception, I think we rather enhance the public evil which many people profess to see in it by making it exclusive; and perhaps that is an evil. But if we throw open the banking business so that anybody may become a banker one or more persons, at their pleasure, by prescribing these rules, those rules can certainly be made to protect and shield the interests of the public. Two classes of corporations have been referred to here. The monopoly corporation of the kind referred to there is undoubtedly and the corporation for public purposes exclusively. Well, banks and railroads have both been held to be quasi-public institutions. Railroads are so much so that the courts have refused to grant injunctions that would stop the use of a road. Banks furnish a circulation for public use, and they are also considered as quasi-public institutions. And I suppose it is for this reason that exceptions are attempted to be made in favor of them. But I think the public is only concerned with the banks so far as the circulation is concerned. That is to

say, that the legislature by granting an act of incorporation seems to give endorsement to the bills of the bank when they go beyond the limits of the State. The fact that the bank is incorporated by the State seems to give character to the issues of the bank. While this is true, they should be doubly careful to prevent an abuse of the power to issue bills to serve as money. So that the rules for compelling banks to give security for the redemption of their circulation should provide for that feature, because that is the only feature in which the public in the way of legislation is concerned. As for all other transactions with a bank, it is a matter between the bank and its customers. As I always hold myself to be grown up, I think I am perfectly capable of knowing how to use my money, and I do not ask any legislative interference about that. But bills having the qualities of money go everywhere; they go well where the institution can be known, as it is, by its depositors, and so on, and also where the particulars and history of its management cannot be known, but bearing always the endorsement of the legislative sanction. By the Constitution of the United States we have given the general government the right to control the currency and to say what shall and what shall not be a legal tender. If the proposition of Secretary Chase to make the circulation of the banks of bills having the security of the government, responsibility of the general government—if that should prevail, sir, I should certainly be in favor of letting everybody have a bank who wanted one, under the proper restrictions. I should favor, then, sir, the pending amendment, to strike out "banks or," although I am desirous of some further changes here. I do not see, for instance, the necessity of preventing the legislature from adding special clauses to the charter of a bank or anything else; but I think the power ought to be granted to the legislature, if it is necessary to grant it, of allowing incorporations only for these quasi-public purposes, banking and railroading. But for others that are of a strictly private nature, such as mining work, salt wells, or a thousand other purposes for which corporations are a very useful thing, can be provided for by general rules.

I am, therefore, as I have already stated, in favor of the spirit of this section; but it does not seem to me to approach the subject in precisely the way it should. I am in favor, at any rate, of the amendment of the gentleman from Tyler.

MR. LAMB. I am in favor of the amendment of the gentleman from Tyler; for I see no reason, if we adopt a provision of this

kind, why you should make a distinct class of the banks. But neither, if that amendment should be adopted, can I see any reason for the restriction. This thing of tying up the legislature must end somewheres. We expect under this Constitution to constitute a body that will be worthy of the public confidence. If they are not, we had better not adopt the Constitution. We must entrust them with some powers, and wherever we entrust them with power that power is liable to abuse. We cannot possibly adopt a set of provisions in our Constitution that will confine the legislature in all possible cases to the strict and narrow road of the right. We trust them. We have, it seems to me, if we have erred at all in the provisions we have adopted, it is in imposing too many restraints on legislation. We have certainly not erred much on the other side. This provision for the restriction of the legislative power in regard to corporations was the subject of consideration in the legislative committee. They have reported, and you have adopted, two restraints on the legislature in regard to this matter. One is contained in the 38th section, that "No act to incorporate any joint stock company or to confer additional privileges on the same, and no private act of any kind, shall be passed unless public notice of the intended application for such act be given under such regulations as shall be prescribed by law." The other is in Section 40, that no act shall be passed to incorporate any church or religious denomination, but the title to church property, so it may be used for the purposes intended, may be provided for by general laws. These are the two provisions which the legislative committee deemed necessary as restraints on the legislative power in regard to corporations. The balance in regard to this particular branch of legislative power they supposed should be committed to the legislature that you constitute, if you do constitute a legislature that is worthy of public confidence. But we have one general restraint on all legislation. No act shall be passed without the call of the ayes and noes upon it and the record of the vote in the journal, nor without the concurrence of the majority of all the members elected to each branch. Have you not tied up legislation sufficiently?

What position are you in if you do adopt this clause? Will it prevent the legislature from providing by general laws in all proper cases for corporate bodies? Certainly not. They will have the power wherever it is proper and right, wherever it can be done with a due regard to public convenience and interest, of providing for corporations by general laws. You may go too far in this matter. You have imposed a great many restraints on your legis-

lature. You have endeavored, as far as possible to secure their Constitution in such manner that they shall be worthy of the public confidence. You provide even that they shall not pass an act unless a majority of all the members elected to each branch shall concur in that act. You have adopted certain provisions as part of your Constitution in relation to their particular power in regard to corporations. Now, you will impose other restraints, other trammels, on them without seeing—for I must confess I cannot see exactly, how they are to operate under such constitutional provisions. Whatever may be the necessity in a particular case, whatever may be the emergency, they are bound by a law, for a constitutional law is of that character, as immutable as the laws of the Medes and Persians. They cannot set foot one inch beyond the line you have prescribed for them, whatever may be the necessity, whatever the public interests may require in a particular case. Is this right, gentlemen; is it judicious? I think that in all ordinary cases, under all circumstances, this thing of granting special charters may be dispensed with by the legislature by the enactment of general laws; but it is not necessary to put that provision there in order that the legislature may make such laws. They would have the full power over the subject. They would have the power to provide for incorporations by general laws in all cases. The only difference—and it may be a very important difference—would be that if some emergency arose—if some great public necessity existed—in which it would have been necessary to step over these general laws by mere legislative enactments, the legislature could provide for that emergency and necessity if it arose, while if you had put it in the Constitution, the thing is completely out of their power. Have we not gone far enough in that direction?

The hour for it having arrived, the Convention took a recess.

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AFTERNOON SESSION.

The Convention reassembled at the appointed hour.

THE PRESIDENT. When the Convention adjourned, it had under consideration the amendment of the gentleman from Tyler?

MR. VAN WINKLE. We are rather few in number, but I suppose all the gentlemen who voted for nine o'clock are here. I hope so! There are some gentlemen, however, absent whose absence I regret at this time.

MR. POMEROY. I think the nine o'clock men are in!

MR. VAN WINKLE. I hope for the sake of consistency they are all here. I wish to offer a substitute for the proposition of the gentleman from Marshall, who is one that I wish were here. It is not a substitute for the motion of the gentleman from Tyler. I believe that will be in order, sir?

THE PRESIDENT. It would be in order.

MR. VAN WINKLE. The amendment of the gentleman from Tyler is unfair. I stated this morning, sir, why I coincided with the spirit of the proposition, but that it did not seem to present the case in the way in which I preferred it should be presented. I have taken advantage of the recess to draw up one after the hearing the remarks that were made here and endeavoring to conform to them as far as I thought I could. I will read it, sir, for information:

"The legislature shall pass general laws whereby any number of persons associated for mining, manufacturing, banking, insuring, or other purpose useful to the public, excepting the construction of works of internal improvement, may become a corporation, on complying with the terms and conditions thereby prescribed; and no special act incorporating, or granting peculiar privileges to, any joint stock or other company or association, not having in view the construction of some work of internal improvement, shall be passed. But no company or association shall issue bills to circulate as money until it has given security for the redemption thereof, in such manner as shall be provided by laws of this State, or of the United States."

Now, sir, the first point of difference I would like to call the attention of the Convention to is that this makes obligatory on the legislature to pass these general laws of incorporation. This excepts works of internal improvement. I would have no objection to include them if they were of limited length and lying wholly within the State. But as things have arranged themselves in this country, every work of internal improvement now becomes connected with some other work, by which means it becomes part of a system, and that system may be used as to operate beneficially or injuriously to the interests of this particular State. There are reasons, therefore—I coincide in that with the gentleman from Kanawha—there are reasons, therefore, which are special, which pertain to that particular class of corporations and which arise in the particular nature of the circumstances, which induce me to

make the separation. So far as it was merely giving to persons the power to construct their railroad, that might be done under general laws. So far as it only affected individual interests, local or neighborhood interests, that might be done under general law; but as it does and will under the system that has grown up be likely to affect for good or for ill the interests of the State at large, it is proper I think that the exception should be made and that the legislature, representing the whole State, should to a great extent in the other cases have the control of it. What may be done in relation to the appropriation of funds in aid of them is a question that will arise under the report of the Committee on Taxation and Finance.

The concluding portion introduces the provision which I spoke of this morning in reference to banks, or those that issue bills to circulate as money. There we should demand, I think—at least, I am inclined to demand—that if they ask the privilege of issuing bills they should secure the public against any loss in consequence thereof. It is a consequence, if carried out fairly and properly, that the securities, the officers who are concerned in taking the securities which it proposes should be provided for their stocks, is what they should be. But if the thing is properly attended to by the officers in charge, the public will be safe from loss, or nearly so, even in the worst of times. I have concluded the substitute "as provided by laws of this State or United States," I have added the United States although not absolutely necessary even in view of what I had in mind. The Secretary of State has proposed, and I think it is probable Congress will adopt, the basing of the whole circulation of the country upon bills bearing the issue of the United States but made redeemable at the counters of banks; and they are to be secured in the notes of the of the United States, of United States stocks. I think that will be adopted. I think it is constitutional. I think it will be beneficial; and I have introduced those words so that in case it should be adopted there need be no equivocation about it. I say they are not absolutely necessary. In the first place, because if we recognize the authority of the United States that authority by the provision of the first clause of our Constitution is paramount as well as by the Constitution of the United States itself.

I will offer that, sir, as a substitute for the proposition of the gentleman from Marshall, and the amendment offered by the gentleman from Tyler.

MR. IRVINE. I ask that the substitute be laid on the table and printed, and that the further consideration of the proposition of the gentleman from Marshall be postponed until tomorrow, until we can get printed copies of the substitute. I consider this a very important matter that ought to be duly considered by the Convention.

The motion to lay on the table was agreed to.

MR. POWELL. I presume it will be in order now to offer the section that I proposed. I move then that the following language be inserted as a section, I am not particular whereabouts, in the legislative report:

"The legislature may make laws regulating or prohibiting the sale of intoxicating liquors within the limits of the this State, or in any of the counties thereof, or in any corporation within the State, when such legislation is demanded by the citizens thereof, and the legislature may submit such laws to the people of the State, county or corporation, as the case may be, for their ratification or rejection, at the ballot box."

I do not know that it is necessary for me to say anything in support of this proposition. I apprehend that the Convention is prepared to act upon it, and I hope will insert it. It does not bind the legislature to make such laws, but only gives them the privilege. It says they may make such laws, may make laws regulating or prohibiting the sale of intoxicating liquors.

The reason why I desire this inserted in the Constitution is—one reason at least—that indicated in the preamble, that in some states in which such laws have been passed they have been decided as unconstitutional by the courts. Now, we wish to have this inserted to the end that if the Legislature of West Virginia shall pass such a law, the courts will not be able to decide the law unconstitutional. It gives them the power; and I apprehend that no one can object to granting this power to the legislature. I apprehend it is not necessary for me to say anything before this intelligent body in respect to the evils of intemperance, the evils of intoxicating liquors. We have all seen and perhaps to a greater or lesser extent havé felt either directly or indirectly the effects of intoxicating liquors. I am aware that it may be contended that the legislature may have this power; but then, while such may be the case while other legislatures in other states while their constitutions do not prohibit the legislature from passing such laws, such laws have been passed and been pronounced unconstitutional.

Let us insert it, then, that if our legislature should take a notion to pass the law the courts cannot say it is unconstitutional.

MR. PARKER. Massachusetts, as I recollect, passed a law to prohibit the sale of ardent spirits. Indictments were found under it and trials held; and I think—I am very sure—the Supreme Court of Massachusetts sustained the indictments, sustained the law. The case was then removed to the Supreme Court at Washington; was argued against the constitutionality by Mr. Webster and Mr. Choate, and Mr. Halleck I think, and the Hon. John Davis, who is now dead, on the other side in favor of constitutionality. The Supreme Court in that case decided that the Legislature of Massachusetts had the constitutional power to pass such a law. In the Constitution of Massachusetts, there is no clause or mention made—no clause giving any particular or special power to the legislature for that purpose.

That was about ten years ago. I do not recollect the parties. It was the Commonwealth of Massachusetts *vs*—I do not recollect the name of the person who was indicted. I know the fact to be so. The question has been settled by the highest judicial tribunal of the land; and I suppose that decision overrules everything else. If the question should arise, if our legislature should pass such a law and the question should come before the courts of our State, of course they would be bound by that decision on the question by the United States Supreme Court.

MR. VAN WINKLE. Mr. President, I am ready to acknowledge, sir, of course, that the abuse of intoxicating liquors is a great evil; but I am not ready, sir, to endeavor to get rid of that evil by inflicting another. A law such as this proposition contemplates is what was wont in old times, and is still worthy of the name, a "sumptuary" law; one of those laws by which these grown-up people, come to years of discretion were attempted to be restricted, gentlemen, in the most small matters which every man ought to control for himself—what they should have on their tables, what they should dress in; how much over 12 inches their shoes might project beyond their toes; and many other things of that kind which I hope have been laid aside in this day and generation. I have no hesitation in saying, sir, that the laws of the Commonwealth of Virginia in reference to the use of intoxication liquors, if there had been enough moral courage in the community to enforce them, would have been sufficient to lessen greatly at least that evil among ourselves. There was a law, I remember, by which

if an ordinary keeper abused his privilege—I am not sure whether it is perpetuated in the new code—to make two magistrates together suspend his license. I doubt whether it was ever put in force in the whole State of Virginia.

Now, sir, I have a very clear recollection of the origin and pretty nearly the whole course of what is called the "temperance movement," and I will beg leave to state a few facts in connection with it. It is more, I think, sir, than thirty years ago when this thing had arisen to prominence and these societies were being formed for the purpose of erecting public influence into a tyranny; and a very able writer in a quarterly review then published in Philadelphia—the name of which I now forget—had in an elaborate article called the attention of the people of the United States to the evils that were growing out of the increased consumption of liquor in this country; particularly to the evils which arose from the too free exhibition on all occasions, proper and improper. For I recollect distinctly, sir, that when you called at a gentleman's house, unless he set out his bottles before you went away, you thought yourself rather slighted, and when it was on every table. This article seemed to strike the public understanding, and a wholesome public opinion operating within its legitimate sphere began to control the matter, and to lessen the evil. But, sir, about that time an old man in Massachusetts got up these societies, when public opinion was setting in the right direction and was operating wholesomely on the thing, with a view of arguing that public opinion into a tyranny to force people into measures which they happened to approve. I remember, sir, of reading an extract, and that is over twenty years ago, from a sermon or lecture by Rev. Dr. Channing in which he took this very ground I am now taking and rather warned those who were pursuing this matter in the style in which they then proposed it against inflicting a greater evil, in fact injuring the cause and producing a reaction in the public mind by this attempt to raise up (and I get the expression from him) "the tyranny of public opinion." After this, whenever public opinion seemed to be setting in any wholesome direction, the thing has been to form societies and to press the legislature to pass extraordinary laws, not to cure the abuse but to rout out the whole thing. Those have been my opinions in reference to this movement, and those whose recollection extends any way back know that the legislatures were beseiged to pass harsh laws on the subject. I think public opinion has had time to recuperate itself and that it is now operated perhaps in every community in a whole-

some manner in regard to it. That the basis of evil has not been crushed out is very true; but that in the more reflecting part of the community, among all who have self-respect, or a respect that is for themselves, many of those to whom we look for examples, the abuse of intoxicating liquors is certainly discouraged. Now, sir, this is one of those things that to my mind does not come within the ordinary purview of legislation. We consider it, in modern times, as an evil which if it is to be corrected at all should be amended by approaching the public ear and convincing it that it has a duty to perform in relation to it; and I believe, sir, that kind of treatment of any of these evils that are constantly growing up in society and many of them disappearing after they have run their course, that a firm resistence to it, as it were, by those who have influence in the community will be found sufficient, so far as anything can be sufficient, to eradicate the evils that oppress us. If, sir, I thought a law of this kind, in the first place, was necessary and, in the second place, would reach the evil, I might feel different in relation to it. But if there was no other way of reaching the evil, confessedly a great one, except by the enactment of even harsh laws, I would perhaps be disposed to accede to it; but believing there are other ways and that this law cannot be necessary, I am unwilling that we should put it here into the Constitution making it, as it were, obligatory on the legislature to pass a law of a kind at least that are very obnoxious to public opinion. The use of alcohol in the arts, for medical purposes and many other purposes might by this means be prohibited, while the use of it in moderation by those who choose to do so cannot be objected to. I have been using more or less, like old Fontanelle, who said it was a slow poison. He was upwards of eighty when he said it. Yes, he had been drinking it all his life. It was a very slow poison.

The question is whether in order to reach the abuse the use under proper circumstances is to be prohibited. I should assent if this law would reach the evil. But I can give you a little of my own experience in reference to such laws. I know, sir, at one time in our county when the county court abusing its powers refused to grant any licenses, there was more liquor sold than there had been before, but it was not sold openly. Whether the young and others if they choose to seek it were seen by the public; but it was sold away in secret places. The inducement to those who have least discretion in the use of it was double what it was before. Is it to be supposed, sir, with so many means of conveying

it secretly, even in our rooms, they could prevent its use by the most stringent regulations; and even if such a law as this was passed, that liquor would not be brought into the State? And would not the very same thing occur, that then it must be sold and finally drank in private places? Those of the community whose example, whose warnings and advice might be of effect on those addicted to the use of it would be nullified by the fear that you would not know when or where it was done. The effect of laws of this kind is simply to change the use from a public abuse to a private one, from an abuse where it might be punished to one where its ravages and evils are greater than in the former case.

Now, sir, I should not think it necessary for our Convention to act on the subject, but if the legislature can place any penalty on the abuse of intoxicating liquors that will make it a degrading offense which will tend to turn the young against it from their earliest years—anything of that kind; if they can punish habitual intoxication or can remedy any of the evils of habitual intoxication by placing its victims in the same position as lunatics or idiots; any remedies of that kind which are directed against the evil and not against the use—which may be proper in many cases—I would not object. But it is, as I have already said, I am opposed to any attempt to cure an abuse by forbidding or restricting the proper use. I think we have not much ingenuity as legislators if we cannot find some way to reach the evil without reaching also the proper use. I am aware, sir, that this is not the popular side of the question in these days, and possibly may not be the popular side in this Convention. But while I am as free as any one to acknowledge the abuse of this thing, I must say that I believe the evils can be got rid of in some other and better way. I do not contend, sir—by no means—for the habitual use on the part of anybody. I do not, of course, contend that anybody should get intoxicated or that it would be a venial offense in anybody to do it. I do not contend for anything that could be obnoxious to a just public sentiment; but I am not willing to introduce the precedent of passing laws of this kind till it is shown that the evil cannot be reached in any other way.

MR. POMEROY. I have not much desire to make a speech on this subject. I confess my ideas are rusty on this cause. But let us see if the argument of the gentleman will hold good. Does any person believe that in proportion to the increase in the number of the people there is as much intemperance in all parts of the

United States now as there was before the agitation of this subject? If so, I do not. There is not as much as formerly. Now, the gentleman says he will give us a little of his experience about Wood. Well, I will give a little of mine. We have no licensed houses in Hancock, and have not had for many years. If a man gets liquor there and drinks it he has got to go into Pennsylvania, or Ohio, or some adjoining county. And we find there is not anything like as much intemperance as when we had men licensed to sell ardent spirits and make men drunk for the sake of making money. But in regard to prohibiting a thing vicious and wrong, public sentiment ought to uphold the law. That part of the gentleman's argument is sound and good. We have a law on your statute-books that if any white man is found drunk he shall be fined the sum of one dollar and costs. It is not considered a good act for a man to get drunk. Well, now, is it not inconsistent to fine a man for getting drunk when we license another man to hold out inducements to him to get drunk. Why have we a law to fine men for getting drunk but no law to fine the man who makes him drunk? Why have we a law that no man can open a book-store and sell obscene books? Why prohibit that?

MR. VAN WINKLE. The parallel would be to prohibit the sale of all books, because some of them were improper. You may prohibit intoxication as much as you please. I never knew the one dollar penalty to be inflicted in any case.

MR. HERVEY. I as justice did so.

MR. POMEROY. It is a very evident thing that the same state of morals does not prevail all over the State as in the county where the gentleman from Wood resides. We enforce this law with us, because we believe it is a salutary provision. If it is not, all men will agree that it is a dead letter and ought not to be on the statute book. But it is enforced where public opinion is up to the point to reinforce it. It is either right to sell ardent spirits as a common beverage or it is wrong. A thing cannot be partly evil and partly good at the same time. There is such a thing as evil and good being separated and they cannot be combined together. A man cannot be a good man and a bad man both at once, nor do a good act and a bad act at the same time. The common sale of intoxicating drinks must be either a benefit and blessing or else a curse. It must either tend to elevate a man and make him a better citizen and member of society or have a tendency to make him

worse. But, says the gentleman, if you make this prohibitory law men will sin in secret. Well that is in accordance with scripture: "They do evil and they love darkness rather than light." Why? "Because their deeds are evil." And that is the reason you see these fellows poping down these stairs at night into dark cellars. "But the man that loveth righteouness cometh to the light that his deeds may be made manifest." That is the reason they love darkness. I know there are very few men would like to come in—I do not suppose we have a man here who would like to pull out a flask and take a drink here. He would get into a dark corner. I want these men, if they do sell in violation of law, to do it in that way. I want them to sell it in secret. I want them to be so restricted; because it is true the gentleman from Wood understands that as well as I do it is a business every man is ashamed of. There is not a common liquor-seller in the United States of America that has not lost every proper sense of manhood he ever had that is not ashamed of it. You see sometimes a fellow we call a "fop" walking along the streets and you see a fellow standing over on the other side of the street, and to him a tailor says "Look there; that is a coat I made." Why does he say that? You see a boot-maker talking with associates under similar circumstances: "Those are the boots I made. Don't they fit that man?" But you see a fellow going along sometimes catching to a sign-post and singing "United we stand, divided we fall." Do we hear the liquor-seller saying: "There is one of my customers. I made him that way." Why don't he say that—brag of his business? Because he is ashamed of it. Under the light of public opinion, he knows he was doing that which was wrong in the sight of his Creator and of all good men; and therefore he never brags of his work. When a man becomes a habitual drunkard, why he kicks him out and tells him he cannot have drinks about his house.

Look at this system of licensing men to sell liquor. We say we do not want a man to abuse his privilege; we do not believe this law vicious at all. The man who sells liquor in the fashionable house is the worst man of the two. Why? Because, look at this very simple illustration of it. Here is a man that has become a confirmed drunkard. According to the principle of this fashionable man he cannot get liquor there, because he will not have drunkards about his house. But the same man has a young boy who is just beginning to go out into fashionable society and he will not drink liquor where his father gets it. So he gets his liquor among the fashionables; and after a while he goes on step by step; accord-

ing to the principle of this respectable hotel and he must leave this respectable hotel and must go to the low doggery; and by that time he has killed off the old man and is just ready to begin to kill off the boy. Which is the worst man? You cannot make a bad business respectable. There is not a man selling liquor for the mere sake of gain in the United States but his conscience tells him it is wrong. No man has a right to take from his fellow man that for he gives no equivalent. How can a man say it is an equivalent when he gives him that which destroys both body and soul? Therefore I am in favor of this provision, which merely says that if the legislature do pass such a law, the lawyers are not to quibble with it and say it is in violation of the Constitution of the State. That is all we ask; all that is proposed by the proposition of the gentleman from Harrison.

I just made these few remarks on the spur of the moment, but will wait until we hear what may be said.

MR. STUART of Doddridge. The gentleman from Wood appears to be opposing this section as though we were legislating against the right of retailing ardent spirits. I do not understand it in that way. I understand this is a section proposed to be put into our Constitution settling a moot question that has heretofore been agitated in our country that the legislature has not the right to legislate on this question. Now, I am for this section—decidedly in favor of it—because it settles that question; and if the legislature at any future period sees cause to legislate on that question, I am willing to let them do so, to let it be a constitutional right that cannot be denied to them. But I must be permitted to say that the legislature heretofore has always been in an opposite direction; that is legalizing this traffic, legalizing crime and immorality. I have always looked upon it as one of the greatest evils that happen to our country, the legislature legalizing the right to make drunkards. We cannot foresee what may be the future legislation of the new State; but if they choose to reverse that course and look at it in a different light and see cause to legislate against the right of carrying on this traffic, why let them have the privilege of doing it.

Just a few words. I do not want to deliver a temperance lecture but simply to put this thing in its right place. Let the question come up fairly. We are not legislating now as though we were legislating against the right to do this but simply giving it to the

legislature and settling the question that they have the right if they choose at any future time to legislate in that way.

The gentleman's argument is not well founded. Why is it we find—and I suppose he would support that kind of legislation—why is it we legislate against the right of retailing unsound provisions, against the selling of obscene books, etc., but he is unwilling we shall legislate against what is a greater evil than either? The gentleman says our proposition is equivalent to legislating against all books. Now I hold this, that if the legislature choose to act on the authority we propose to give them, they will be legislating against a thing that is exactly in the class of the obscene books. There is no good book about it. There is no good thing in it; and although it is a slow poison, if I was going to deliver a temperance lecture, I could show it is an effective one. It is just the kind of argument made by the gentleman that has caused all this trouble. I know he has used it, perhaps all his life, and it has been a very slow poison in his case and has not injured him. Another man will take up the same course and the example he has set perhaps induces men to trifle with this thing, and they are led on, not having the same self-control the gentleman from Wood has. This is the way all men start. It is poison for the most of them but a very fast one for some. They start out with the same belief he has; but it grows on them a great deal faster than it does on others.

To get down to the question, we are now legislating on that thing and simply settling what I consider to be a question upon which sentiment has been divided whether the legislature has power to legislate in this way. We establish the right. They can exercise it or not according to their view of their duty to the constituency who will send them up to the state capital to represent their wishes and interests. If we adopt this provision the question cannot be raised to prevent such legislation. I will vote for the section offered by the gentleman from Harrison.

MR. BATTELLE. I only want to say a word or two on this point. As has been well said by the gentleman from Doddridge, and by the gentleman who preceded him, it is not proposed to legislate on the subject of the sale of intoxicating drinks as a beverage. It might very properly be a question whether public sentiment in this State at this time is such as to justify such legislation if we proposed to inaugurate it. It is proposed simply to settle the constitutional question; and the phraseology of the section offered by the

gentleman from Harrison is permissive simply and not mandatory, as we all see. I must disagree with my friend, the gentleman from Wood, in reference to the classification of such laws against the sale of intoxicating liquors as "sumptuary" laws. I am not learned, of course, in legal matters; but yet I believe all hands agreed very unanimously to condemn that class of legislation in former ages. So far as I know this proposition, should it obtain a hearing in the legislature and be acted on hereafter does not propose to revive that class of laws. It goes on a principle that has been settled long ago: that that traffic which is pernicious to the interests of society may be suppressed by law. The same principle is adopted in laws prohibiting the sale of poison meat, injurious food. There is no law so far as I know that a man may not eat such food; there is a law against the traffic in such food. The passage of a law by the legislature regulating, or even prohibiting, the sale of intoxicating drinks does not say what a man shall drink or not drink. It does, however, propose to act on the traffic in such articles. The laws which invade our natural rights—the right of the road, the rights which we exercise with such restrictions every day, are in fact of the same principle as that which would be involved in a law such as it is proposed the legislature may be permitted to pass. But, as I said before, whether or not the public sentiment might justify the establishment of any restriction in reference to the sale of intoxicating drinks, is not now the question. It is proposed here simply to settle the constitutional right of the legislature to do so should they be disposed to do it. I must vote, sir, in favor of the proposition.

MR. TRAINER. Mr. President, I hope this proposition will prevail. I feel exceedingly anxious to see the day come in Virginia when the business of making drunkards shall be robbed at least of its legal character. I suppose there is no gentleman in this Convention who would attempt to say for a moment but what the use of intoxicating liquors is a great evil and one of the greatest curses, if not the principal one, of our country. And yet it is legalized and made respectable by the law of the country.

This, however, does not propose to prohibit the sale of ardent spirits but to give to the authority to regulate the sale or prohibit where the people desire it. But I want to submit this case. Suppose, for instance, the people of a certain county might desire to prohibit the sale of ardent spirits in that county.

MR. SOPER. That part of the proposition is withdrawn.

MR. TRAINER. Well, the people within any section of the State.

Mr. Trainer read the proposition submitted by Mr. Powell.

MR. POWELL. I would remark that my colleague called up the proposition and proposed to stop at the word "State." If the gentleman wishes to move to amend by adding that when such legislation shall be demanded by the citizens thereof, I have no objections.

MR. TRAINER. Well, sir, within the State if the people within the bounds see fit. I hope they will have the right to do so, and that the Constitution will guarantee to the people the right to legislate on this subject. The legislature is given the privilege of legislating on other evils, prohibiting other things of less magnitude than this, and I cannot see why they have not the constitutional right to regulate the sale of intoxicating liquors.

MR. VAN WINKLE. I have no objection to that, sir.

MR. TRAINER. I know in one county of this State some years ago, the people in the county, through their court succeeded in getting this question of "license or no license" submitted to the people, and a large majority of that county voted against issuing license. The county court after that decided it was unconstitutional and that they had no right to take such a vote as that, and in the very face of the people proceeded to license every man that asked for a license at every cross-roads and in every little village, and every community and neighborhood in the whole county. What occurred in that county may occur in any county within the bounds of this new State; and if such a thing does occur I hope the people will have the privilege of asking and the legislature the power to prohibit the sale of intoxicating liquors. I cannot see what harm it can do.

MR. HARRISON. The whole object sought to be accomplished by this proposition is to give to the legislature the unquestioned right. Now, I am inclined to think, sir, that under the general powers given to the legislature they may pass a law regulating or prohibiting the sale of liquors within the State; but I believe our legislature now under the existing Constitution of Virginia has passed laws regulating the sale and use of intoxicating liquors. But the difficulty we wish to avoid is this: The friends of temperance in the several counties labor earnestly and diligently to induce

the people by their votes at the polls, as in the case referred to by the gentleman from Marshall, to express their wishes at the polls that no liquor shall be sold by authority of the county court in a county; but that county court, when the question comes before it takes on itself to say that it is unconstitutional; we have no right to refuse to grant license although the people want it, because it is unconstitutional. An idea they have picked up from some source. We want to get rid of that species of litigation referred to as occurring in Massachusetts. We want to keep this question from being raised by hired lawyers. The thing can do no harm in the Constitution, at all events, merely putting in here a provision saying they shall have the right to pass these laws if they see fit. It is to deprive them of that excuse for granting licenses, for they always manage to find an excuse in some way. That is my experience. If this thing is inserted in the Constitution there is nothing in it obligatory on the legislature to pass any law in reference to it at all. If we can work up the legislature—we have never had the good fortune to do it, but I hope that in new Virginia the friends of temperance may be able to get a legislature that will pass a prohibitory law in every sense of the word. My short experience demonstrates it is the greatest evil that ever cursed mankind. I hope the first legislature we assemble in the State will pass a law prohibiting its use in every shape and form. We will not be allowed to say "Commonwealth" any more after we get this State into operation. But we do not want this question to go from the county court to the superior court and then to the Supreme Court of the United States. We do not want to be encumbered with any such legal questions as that. All we ask of this Convention is to put into this Constitution a declaration that the constitutional right shall not be raised if the legislature should pass any such a law upon the friends of temperance. They do not advocate this thing for their own benefit but for the benefit of all mankind; and when they ask this Convention to do what I consider as beneficial an act as this, I hope this Convention will do it by the incorporation of this provision in the Constitution. Then we will make our arguments to the legislature.

MR. VAN WINKLE. I profess myself to be as good a friend of temperance as any gentleman on this floor. Just as good and strong a friend of temperance as any gentleman on this floor. I do not mean to be intimidated in my way of getting rid of the evil; and I am afraid the thing has not always been temperately

managed in this regard. Now, sir, the gentlemen seem to avoid introducing the word they have got in here, that is "prohibiting." The gentleman just up expressed it openly. There is to be a complete shut-down and the thing is to be prohibited in toto. As for this matter of getting a constitutional difficulty out of the way, I do not remember distinctly what those constitutional questions were that were raised; but I do remember that in one case the constitutional question rose out of the submission back to the people and the ground was that the legislative power of the state resided in the legislature and that they could not go back to the people for further legislation. That I know was the decision in one case. Because there could be no doubt at all about the right of the legislature to regulate the sale of any article of commerce so far as it does not conflict with the United States laws. They cannot prohibit its importation into the State.

The gentleman also spoke of the evil of men being licensed to sell liquor, and yet they introduce the very word that gives the authority to men to sell liquor—that is, regulating it. They may regulate it in other ways; but that very word "regulate" would be sufficient to give all the power to the legislature to authorize the sale in licensed ordinaries. The question in Virginia was within the law but not in the constitution; and I say very distinctly that I can prove it from the statute book of Virginia that no county court has a right to refuse an ordinary license when it is applied for by a proper man and held in a proper place. The law does prescribe that a man of good character, and so on, should be entitled to have an ordinary license at a proper place; and to also fix indelibly and indubitably what was a proper place, it provided this, sir, that no ferry-keeper, no ferry-master should have a license to keep an ordinary unless there was no other ordinary within (forget the distance) perhaps a mile or two of the ferry. That was saying in so many words that a place of public resort was the proper place in the eye of the law, and of course a county court who refused to grant a license applied for under proper circumstances, in a proper place, was disobeying the behests of the law. That, however may be somewhat aside from the question here; but what I object to is this absolute prohibition; and if you strike that word out there is no use of putting anything in the constitution in reference to it. I will move that the word "or prohibiting" be stricken out.

MR. SMITH. I suppose that my temperance principles will

not be questioned by any one. I never called for a drop of liquor at a bar in my life, and all the liquor I ever drank would not amount to a gallon. I have been twenty-five years a member of a temperance society, and this I offer as evidence of my temperance habits and opinions. I object to that amendment altogether for two reasons. My first reason is those assigned by the gentleman from Wood. I do not think by legislation you can make men sober. You must operate by influences other than those, by moral influences, by persuasion, by example, which is the best influence that can be used. Another reason is, it is utterly unnecessary. The gentleman is attempting to get into the Constitution that which is as the idle winds. Why, sir, the legislature may pass such a bill if they wish as they have that authority now just as much as they will after these words are inserted. You may say that the legislature may pass a law forbidding the sale of bad meat, a law saying that the legislature may enact that a man guilty of assault and battery shall be prosecuted; that the legislature may pass laws prohibiting all misdemeanors or felonies or crime of every sort. She has now without that clause as fully and perfectly the power of passing a law prohibiting or regulating the sale of liquors as she would have with it. There is no sort of necessity. You are stuffing the Constitution with powers that are wholly unnecessary. Inhibit the legislature. That is all you have to do. You are making a code of laws in the Constitution. The best constitution ever made is the shortest and simplest. Having a state legislature, all that is necessary is to put inhibitions in it for she has already power all power not inhibited and not granted to the general government. These authorities given to the legislature only increase the volume of the Constitution, perplexing the country with them; because it would be inferred by the small man in the country that if you had not put that in you could not grant it. It was said you should not pass a law to sell bad meat. Well, you have nothing of that sort in the Constitution. That is just as necessary as this. Why should you find it necessary to authorize the legislature to prohibit the sale of liquor and not authorize them to prohibit the sale of bad beef? Just as much necessity for putting one into the Constitution as the other. There is no sort of necessity for it and we have been occupied a great deal of time, with great respect to gentlemen, with what does seem to me a very idle proposition. It is granting to the legislature the power to do that which she has the full right to do without the grant. The gentleman has alluded to a case in Massachusetts that was properly stated. I carried the same

question up to the court of appeals in the case of schools where the power is delegated to persons to incorporate with given powers. Here was an authority to establish a public school; and whether that public school should be established or not was to be decided by the people. It was held on the other hand that the legislature having the whole power of legislation could not delegate that to anybody. It must take the responsibility and name it herself. And on that question various causes have gone to the court of appeals. I took one there myself. It has been in Pennsylvania, in Delaware, New York, Massachusetts. I had occasion to examine the whole round of this question. But it was such a one as this at all. No lawyer would ever raise such a proposition as that, that unless you give leave to the Legislature to pass such a law such a one could not be enacted. You may as well give, as I said before authority to pass laws upon all sorts of crimes where that power does exist and vests in the Legislature and nowhere else.

I hope it will be the pleasure of the Convention to vote down the amendment and to vote down the proposition itself. For I think they are unnecessary and uncalled for. I say I am as strong a temperance man by example, by precept and in every way as there is in this house, and I yield to no one on that point.

MR. HERVEY. I would suggest to the patrons of this proposition that if they desire to accomplish their purpose they should strike out "may" and insert "shall." Then it would accomplish their purpose, but so long as that is retained it is only discretionary. It is not mandatory; and it is conferring no additional power on the legislature. You do not make it mandatory. You simply leave the matter at the pleasure of the legislature where it rests before, repeating on paper what existed before; confers certainly no additional power. Therefore, to test the proposition fairly, to place it on its true foundation to the patrons of the proposition to change it to a mandatory one.

MR. POMEROY. I have no tenacity about this question; but I do not think my friend from Wood ought to offer an amendment which is virtually to kill the whole proposition. Why not let the proposition be voted on by the house? I do not think—I say it in all kindness—the gentleman from Wood, when he has a matter before this house would like it if another should offer an amendment calculated to kill it. We ought to have the benefit of an affirmative vote. If a majority of the house thinks it ought not to go in they can say so by their vote. I would feel very loth to offer an amend-

ment of that kind to any proposition offered by any gentleman in this way. It is well known there is always an advantage in an affirmative vote; and why this amendment should be offered that kills the whole thing rather than let the vote come on its merits, I do not see. I think the gentleman from Wood should let us vote on the proposition itself. However, I give this notice that on this motion we will require the ayes and noes, and if it is the desire of gentlemen to vote to strike out the word, that of course kills the whole thing.

MR. VAN WINKLE. The gentleman imputes to me an object in offering this amendment. I should like to know with what object he calls for the ayes and noes.

MR. POMEROY. I will state very clearly the reason why I call for the ayes and noes on an important question like this that there is no other method of ascertaining the full vote of the house.

MR. VAN WINKLE. Well, I stated that prohibition was the only thing I opposed. I have no objection to withdrawing the amendment. But I have failed to see why the affirmative vote has any advantages. The sense of the house could as well be taken in one form of the question as the other. But I withdraw it, sir, on the suggestion that has been made.

MR. POMEROY. I think I can bring witnesses to attest that in many instances when the presiding officer calls for a vote: "all that are in favor of the motion, say aye; those opposed, say no, not a single "aye" or "no" is heard in the house; that silence seeming to give consent the presiding officer announces that the motion has carried. On a motion taken this forenoon, there were perhaps three or four ayes.

MR. STUART of Doddridge. In reference to the argument of the gentleman from Logan, he is opposed to encumbering our Constitution with legislation. Now, it is only two lines; and I believe he is right in the position that the legislature under its general powers has a perfect right to legislate against the retailing of ardent spirits; but I have noticed that the objection is always raised by gentlemen against any measure they are opposed to, that it is unconstitutional. It is the general opinion that this kind of legislation is unconstitutional. Our legislature is not always composed of such able lawyers as tell us in this body that it does have this power, and the lawyers in that body can not always be counted

on to disclose the truth on a question of this kind, when influential interests are arrayed on the other side. It will be urged that it is unconstitutional; but one reason is that a majority of them like a little liquor and they don't want to legislate against it. That is the fact about it, and they will try every way in the world to dodge the question. The great body of the people are not familiar with court decisions or constitutional questions, and when the legislature, backed by the legal talent within its ranks, tells them these things, they are silenced. This kind of argument always puts them down. It is for such reasons as these that I want to place the truth here where all the people can see it, simply to settle the question and put it at rest for all time. It is not going to break the Constitution down nor make it very voluminous; and it will settle this moot question at once and finally.

MR. VAN WINKLE. I would like to ask the gentleman what he means about "dodging the question?"

MR. STUART of Doddridge. I remarked, sir, that when this question was brought up before our legislature, even our legislature is not composed of lawyers and the majority of them were generally fond of liquor and anxious to dodge the question in any way. My reference was to the members of future legislatures, not to anybody in this house, as dodging the question, because we are all coming right up to it fair and square. We have every point well discussed, and no man can dodge the question here. But I have seen it dodged; and I have been in bodies where it was dodged; and hence I want to fix it so that they cannot get behind that thing; and it does no harm and only encumbers our Constitution with two lines and settles the great question that has agitated the country at large. The gentleman from Logan says it is not necessary even to say the legislature shall have this provision, for you cannot legislate against an evil of this kind. You must approach these people by appeals to their reason, their good judgments, their morality. Well, now, sir, it might be said you might approach the thief and robber in the same way with reasoning. Reason with a fellow that has robbed and stolen. If you follow that course, you will find the evil increasing. That is why this evil has been growing amongst us, because it has been argued and insisted it is unconstitutional to legislate against a legitimate right to trade and deal in articles of this kind; that it is the property of the party, and his property and his business you have no constitutional right to interfere with; that he has a right to do with his own as he pleases.

Then, sir, it seems to me we ought to impress this, if it ever should arise and the legislature think it necessary to legislate on it, or the people desired to petition the legislature to do so, that if the legislature is not composed of lawyers, who know whether it is constitutional or not, they will have the authority right before them and will know it is, and can act in accordance with the wishes of their constituents.

MR. HALL of Marion. I have been in the habit of resolving every night that the next day I would not speak on any question. I only wish to say on this matter now that I am very strongly suspected at home of being a pretty good temperance man. But I would say here that I do not believe that you can force men to be moral, to be temperate, or to be religious; and that man is the most perfect mule—except the mule himself—that you can scare up, and when you would coerce him to do a thing, although he would intend to do a thing voluntarily, yet if you attempt to force it upon him he will not do it at all. And yet with the consciousness recognizing this fact I am in favor of the proposition, and for this reason. I have looked on the workings of this thing. You cannot coerce the people, you cannot force them to be temperate, but you do not need to do that. But you can put the temptation where it will not stare them in the face. You can by wholesome laws, and the people will sustain you in it, provide against building up a school to teach them to be intemperate. That is what I want. I want that there shall be no quibble about this. Every legal man will admit that the legislature has the power; and yet we have had to combat before the county courts men of the best legal standing who would declare solemnly before heaven that there was no such authority. Lawyers are like other men. They will sometimes dodge the question. I want to settle the thing so that lawyers will be pinned down to it and the people can know.

Well, then, I want to go one step farther. I would have been in favor of retaining what was intended in the gentleman's first proposition—that is, that whenever the people of a county may ask the legislature—I believe that was included in the original but is not in the present . . .

MR. POWELL. I would propose to amend by adding the subsequent part of the proposition.

THE PRESIDENT. You would have a right to withdraw and submit as a whole.

MR. POWELL. Then I withdraw the proposition as offered and submit it in the original form, which is as follows:

"The legislature may make laws regulating or prohibiting the sale of intoxicating liquors within the limits of this State, or in any of the counties thereof, or in any corporation within the State, when such legislation is demanded by the citizens thereof, and the legislature may submit such laws to the people of the State, county or corporation, as the case may be, for their ratification or rejection, at the ballot box."

MR. HALL of Marion. I would prefer it in that form from the fact that I am opposed to forcing this thing on the people, and in that form it provides for no legislative action until the people demand it. In that form it will amount to a restriction, and I think it would be a very wholesome restriction, because, as I remarked in the onset, I think it would operate badly and be detrimental to the very cause of temperance if you attempt to force it on the people before the public mind is prepared for it. You may regulate it. Under the term regulation you may protect yourselves from abuse. And I desire this, that, first it may not be the sense or wish of the people of the entire State to exclude all over the State the sale and use of intoxicating liquors, and I desire that if there be a county in the State where people desire that they shall be entitled to have legislation to establish that as a rule for their county, and this proposition would do that, I desire to make that practicable. I do not know where this may fall. Heretofore the county courts have had control of this; and so far as my observation goes, they have most villainously abused their duty and violated every known duty that it devolved on them in this matter. I do not know where it will fall, because we intend to exclude the county court here, not on account of that particular offense; but if it is excluded, I do not know where this responsiblity will be laid. If this power were vested where it would be properly exercised, then I would not be so particular about any provision of the sort, because I, like the gentleman from Wood, believe that if the present laws that we have were carried out to the letter in the proper spirit faithfully, I believe we would have been in a much better condition.

I must make an issue with the gentlemen on the legal question; and I feel very diffident about doing it; but I am so very well fortified that I will venture. That is the county court has the absolute right to reject in all cases, and is the sole judge in all cases and there is no power on earth that has any right to call in

question that power. I state that on two decisions of the court of appeals of this state, one being an appeal from a decision of Judge Thompson, in the city of Wheeling, in which he decided that when the party brought himself within what they called the provisions of the statute that he was entitled to demand a license. The other was a decision by Judge Summers in which he decided the very opposite. They were appealed and argued by Judge Fry; and the Court of Appeals determined that the county court was the sole judge. I would say notwithstanding this authority, if I am right in this they have never practiced any restriction whatever, done what the people of the community and the county required at their hands. I have seen it in my own county and been told by the presiding justice and other members of the court; it is no use to resist this thing because it is popular and that was the rule under which they granted license.

I want if the people ask it that they may by legislation be protected from the thing; and they can try it and if it works badly petition to have it repealed. I trust it will be the pleasure of the Convention to pass this proposition, which only permits and settles that question upon which there has been so much caviling.

MR. STUART of Doddridge. I desire to insert "State" instead of the word "Commonwealth." I then move to strike out all after the word "State" in the second line.

MR. POMEROY. On that question, I guess it is, that I demanded the yeas and nays. No, not on the amendment.

The motion to strike out was agreed to, and the question recurred on the section as amended.

MR. HERVEY. Before that question is put, sir, if I understand this section it will require now a majority of the votes in the State.

(SEVERAL MEMBERS. It has nothing to do with the State.)

MR. LAMB. If it is in order to make any remarks on the present state of the question, then I beg to say that if there be any one legal proposition which can be unquestionably clear, it is that this is entirely unnecessary, to any such proposition in the Constitution. The legislature have exactly the same power without encumbering the Constitution with this that they have with it. I think no man in the present state of the case can entertain the slightest doubt on this matter. As the section will be entirely use-

less, I shall of course vote no on the question of its adoption. But I do not intend to dodge any question in reference to this.

I will say also to the Convention that I am utterly opposed to this system of legislating for the purpose of compelling men to be good. I do not believe the legislature are a proper tribunal to take care of the morals of a people in reference to matters of this kind. There are a great many things that ought not to be regulated by legislative action, that must be left to a man's own judgement and conscience, and the legislature cannot even interfere with him when he does wrong. It may suit one man not to go regularly to church. This we may admit is wrong; but who is there here that would contend that the legislature shall prescribe that this man, or that man, or any man, should be compelled to frequent a particular church, or any church? It may be the use of tobacco is a great evil; but is it right that the legislature shall attempt to prescribe whether I shall use it or not? What is this whole system but a disposition on the part of one man or set of men to control their neighbors in matters which are not properly the subject of legislative action? If a man does direct wrong to another, there the legislature ought to interfere by its laws. But you cannot prescribe a set of laws that will protect a man against himself. There the great principle of individual freedom must operate; and if you grant that principle of individual freedom, freedom cannot exist without that freedom may be abused. I do not think, sir, that the legislature is the proper tribunal to regulate matters of this kind. I do not think that legislation is the proper mode of reaching evils of this kind. I do not think any more than in the question of religion, that you have the right to regulate for your neighbor whether he shall take a glass of liquor or not, or whether he shall use tobacco or not, or go to this church, or that church or any church; or how he shall dress; or anything of that kind. If the act of your neighbor is a direct injury to you, you have the right to require legislative protection, but the injury must be direct. You have no right to prescribe a set of rules to protect a man against his own voluntary acts. It is only to protect a man against the acts of his neighbors.

MR. POWELL. We propose in this to give the legislature power to prevent a man from injuring his neighbor. We do not propose to make a drunken man sober but to keep a sober man sober. This is the object we seek, not to legalize, not to license men to commit, murder by degrees. For most assuredly, granting a man license to

sell intoxicating liquors, which are generally poison, is giving a man the privilege of murdering his neighbor—to kill that individual if he sees proper; who having inbibed a taste under its legalized system is led on step by step until he has become a habitual drunkard, with the inevitable end; virtually a murder under legalized machinery of law. This is what we are seeking to prevent. This is the object we aim to obtain; and I do hope the Convention will confer upon the legislature this power. I know it has been argued here that they have already conferred the power. It has been stated that they have always had the power. That may be true, but individuals have declared and county courts have declared that it is unconstitutional for them to prohibit the sale of ardent spirits. I am not sure but such pretensions have been set up in the county which I have the honor in part to represent. I know it has been in other counties; and now if the people wish it and we can get a legislature sufficiently temperate themselves to pass a law of this kind, a prohibitory law, let us have it.

Experience has been referred to in regard to this matter. I lived two years in Wirt county, on the Little Kanawha River. The year before I went there the county court granted license, I believe to all who applied. The result was men were drunk all the year more or less. Just before I reached the place in May a man in a drunken spree was smitten down and left a lifeless corpse in the street, or at least he died within a short period. The county court soon after that passed a prohibitory law. They licensed no individual to sell liquor. The result was, I scarcely saw a drunken man in that county during the entire year. The next year they granted license and in less than twenty-four hours after the license was granted individuals were tottering along in the street; and I saw more drunken men in that year, I believe, than I ever saw in my life beside. So that experience works on both sides. Experience is favorable at least to our side of the question.

Let us then show we intend to give the legislature the power; let us give them power to make constitutional for them to pass prohibitory laws, and then there can be no quibble about it. There can be no appeal from county court to higher courts. This will settle the question; settle it for ever. Let us have it.

MR. STUART of Doddridge. I do not intend on this question to pass upon false issues. The gentleman from Ohio is very astute and always gets up a peculiar way of looking at things in order to

carry out his own views. Now, this is not legislating to prohibit a man from drinking at all; is not giving the legislature even the power to legislate against his right to drink anything he pleases. You may drink as much as you please, my good friend, under this thing; but we will not let you sell it to your neighbor. You may wear the kind of clothes you please . . .

MR. LAMB. What is the object of preventing the sale of intoxicating liquors unless it is to prevent me from drinking if I want to?

MR. STUART of Doddridge. We want to keep it out of your way if we can.

MR. LAMB. You want to prevent me from drinking if I want to.

MR. STUART of Doddridge. Lay not the temptation in the way of your neighbor. Still, if you will drink and must have it, we would not prohibit you from doing it. You want to get up the issue that this will regulate the kind of clothes a man shall wear, and all that kind of thing and saying you shall not drink. That is not the question at all. I want the Convention to understand it. The question is, to give the legislature the power to regulate the sale of intoxicating liquors, not who shall drink or who shall not drink. We say to our women or men, Drink as much as you please, but you shall not sell it to your neighbor, provided the legislature passes that kind of a law.

MR. HAYMOND. I am opposed to the section, and opposed to the amendment; opposed to this Convention inserting in this Constitution anything in relation to liquors. I do not desire to show to the world that this new State of West Virginia are drunkards. (A Member: "It will show itself") I do not desire, Mr. President, to say to the legislature, to future legislatures, that they must take away, that they have the right to take away, the liberty of men. If you want a man to be a drunkard, say to him that he shall not buy or drink liquors, and, sir, he will risk his life for it. Sir, I am opposed to anything of the kind going into this Constitution.

MR. POMEROY. It is said by some of the speakers on the opposite side that this is not necessary because the legislature has already the power. I think I fully agree in that, that the legislature has the power; but it has been a moot question raised in various parts of the country; and the gentleman from Harrison has

seen proper to offer this in order that this may no longer be a moot question.

I want to reply to an argument about the county courts. Who is to be the judge if a man asks under the present regulations whether a certain house is proper or not? When the county refuses and decides that there shall be no licensed house in the county, why was it that our liquor men did not take an appeal to the court? Because they understood very well from both our former judges and from the charges to the jury by Fry and Thompson, they knew there was no use making an appeal, that the judge would sustain the lower court, that he would not have houses licensed there when the county court had refused. As result of that, we have had no license; we have no inmates in our jail; we have a temperance community; and it is greatly owing to this fact. But if the legislature has already the power, in order to settle a vexed question, what great harm can it do to place this there?

But it is asked, has not a man a right to drink liquor when he pleases? Why do you say he has not the right to play cards for money when he pleases? Which is the greatest evil throughout this land—gambling at a table for money or drinking liquor in these low "doggeries?" Why, of course, drinking is. Yet you have a statute in every state prohibiting gambling? Why have not men a right to do anything if they have a right to do as they please? Why not let men run horse-races in the city? What led this State into the ranks of Secession but having a majority of the members at Richmond in the habit of getting pretty well "how-come-you-so" if not drunk? Does any man believe in the light of this century we would ever have had any such thing as Secession if it had not been for intemperance? It was not an intemperate lust of power that made the devil secede out of heaven. He was the leader of this whole Secession army; and if it had not been for ardent spirits these evils would not have been here.

This is a question, Mr. President, regarding which a man can be very well satisfied if he finds himself in a minority; because the day is coming when no man can stand up and be in favor of the traffic in ardent spirits. There is a time coming when righteousness shall cover the whole land; and then where will these liquor-sellers be? Why they will be gone under—and the Secessionists with them.

MR. HERVEY. The illustration of my friend from Hancock in regard to gambling and liquor-selling does not prove that there is

no constitutional provision on this subject. That is one of the enactments of the legislature. To the provision before the Convention I am going to offer an amendment, and if this amendment carries I will vote for the concern. Otherwise, believing that the legislature has the power just as effectually in the one case as in the other, I should have to vote against. I move to add the following: "If in any county a majority of the votes cast at any election in such county so desire, the legislature shall prohibit the sale of intoxicating liquors therein." It is a simple provision, sir, that if the people of any county by a majority of the votes desire that the legislature shall enact a law prohibiting the sale of intoxicating liquors in that particular county, that then the Constitution shall make it obligatory on the legislature to do so. Without that provision, sir, I shall vote against the whole concern. It is just occupying that much space and paper to no practical effect whatever.

MR. LAMB. I want to make a mere explanation. If the remarks of my friend from Hancock are intended as having any application to my argument, he has misapprehended the point of it entirely. I did not contend that any man had a right to drink as much liquor as he pleased. I insist upon it that that is wrong; but I also insist on it that many wrongs may be committed that the legislature are not the proper body to regulate. We may commit wrongs in the management of our families, or in extravagant expenditures. So far as religious matters are concerned we recognize that principle in our Constitution. But though it may be right and proper, and it is, for people to attend churches, yet the legislature have no right to interfere with matters of that kind. This is the position I take: not that the thing is right but that there are wrongs which it is not proper that the legislature should attempt to regulate.

I would ask the gentleman from Doddridge, as a lawyer, taking the proposition as it stood, is there any doubt whatever that the legislature has just without inserting these two lines that they would have after you do insert them?

MR. STUART of Doddridge. Certainly, no doubt of it in my mind.

MR. LAMB. Then, as the matter stood, the object is simply to prevent lawyers from raising questions. Why, has this Convention any idea that by inserting any provision in the Constitution they

can prevent lawyers from raising questions about it? Lawyers will dispute the construction of the ten commandments and the Lord's prayer (Laughter). Every provision you insert by way of avoiding question will give rise to forty questions that had never been thought of before. If that is the object—to prevent lawyers raising and arguing questions about this matter—you are misspending your time, gentlemen, in attempting to accomplish any such object. There will be as many questions raised after you have inserted this clause, or any other you may see proper to insert, as there would be if you had left it out. If the matter is clear and we all agree that the legislature has this power, why, then, insert it? We certainly will not prevent the lawyers from starting doubts and difficulties about this thing. Perhaps you may raise them—as is frequently the case, by the very provision by which you intended to obviate it.

MR. BROWN of Kanawha. I am seeking to avoid some of the difficulties that have been raised in this discussion. I will put in the form of a substitute in lieu of the proposition as it now stands a provision which I now offer:

"No contract for the sale of ardent spirits shall be enforced in any court of this State."

Then it presents the case that those who choose to sell them have to take the risk if they sell on credit. When you have struck at the pay, you have struck at the sale. We will thereby avoid another difficulty that I have known to exist in some parts of the country: that sellers permit parties to go on and buy until a large account is run up, and then bring suit to recover it, while the husband has been destroyed by drinking and the family is made destitute by the execution of the debt. Again, it might be said that would be objectionable in regard to wholesale dealers in any large quantities. Well, sir, those are the gentlemen most likely to be affected, and if you never will let any liquor come in by enforcing contracts in that way, you will not have so much of it in the State. At least that leaves every man free to buy or not to buy, but if men sell on credit they cannot collect by the courts.

I will offer that as a substitute for the proposition and amendment.

MR. DERING. I do not like the substitute as well as I like the original section as amended. And, sir, we have had a good deal of discussion here this evening, with all due respect to the gentlemen

who have engaged in it, that has not been relevant to the point in question. It has been settled here by the highest legal authority in our body, and not denied by any on this floor, that the legislature has the right already to legislate on this subject. Then, sir, the whole question resolves itself into this: shall this Convention by these two lines express and settle definitely and forever this question of constitutionality, between the lawyers and the county courts? It seems to me that is the only question for us to decide. Gentlemen tell us all around that the courts and the lawyers differ on this question. The question arises in this shape. Shall the Constitution settle by a couple of lines this moot constitutional question? I prefer, sir, the original section as amended by the gentleman from Doddridge to the substitute now offered by the gentleman from Kanawha. For one, I am willing to say by those two lines that this constitutional question shall forever be settled.

MR. STUART of Doddridge. I am opposed to the substitute being adopted, in lieu of the proposition, because there is not the least necessity in the world for the substitute. In all my experience, "rot-gut" is better than gold and silver always. It passes for change itself; and there is never any credit system about it—hardly ever, sir. It will demand money when meat and bread will not bring it. And it will not affect the sale of it a particle; because it will go on just as it is going on; and the legislature never can legislate in the world prohibiting the sale of it in that way, because I believe it passes as currency, over in my country at least (Laughter).

MR. HERVEY. I will have to rise to a question of order on this substitute. I do not think it accomplishes the same purpose. It is a different subject entirely from the original proposition as amended. This declares the contracts void. The original proposition was with reference to the license, not with reference to contracts at all, regulating the sale, not prohibiting the sale. I think it looks like a different question entirely.

THE PRESIDENT, *pro tempore*. I think, sir, it is nearly connected with the original proposition.

The question was put to vote and the substitute rejected.

The question recurred on the amendment of Mr. Hervey:

"If in any county a majority of the votes cast at any election in such county so desire, the legislature shall prohibit the sale of intoxicating liquors therein."

MR. POWELL. If I understand the amendment is to come in after the word "State."

MR. HERVEY. That is the case, in the second line.

MR. VAN WINKLE. If I understand the amendment it proposes that if any one county desires it, it prohibits it throughout the State. That is the way it reads.

MR. POMEROY. O, no; only one. I can say that in the county I have the honor to represent we could carry a question of that kind by a vote of nineteen to twenty; and I would have no objection to it at all. I would hope it was so in every county within the limits of the commonwealth. Of course this whole matter does not say the legislature shall ever pass an act. It only gives the power to do it; and of course they would not pass it unless desired to do so by the people.

Mr. Hervey's amendment was rejected, and the question being taken by yeas and nays on the original proposition, as amended, the vote resulted as follows:

YEAS—Messrs. Brown of Preston, Brooks, Battelle, Chapman, Caldwell, Dering, Dille, Hansley, Hall of Marion, Harrison, Hubbs, Hagar, O'Brien, Parsons, Powell, Parker, Pomeroy, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Stuart of Doddridge, Taylor, Trainer, Walker, Warder, Wilson—27.

NAYS—Messrs. Brown of Kanawha, Brumfield, Haymond, Hervey, Irvine, Lamb, Lauck, Montague, McCutcheon, Robinson, Ruffner, Stephenson of Clay, Sheets, Soper, Smith, Van Winkle—16.

MR. VAN WINKLE. I suppose the successful party ought to treat (Laughter)!

MR. SIMMONS. As the hour is getting late, I move to adjourn.

The motion was agreed to and the Convention adjourned.

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XXXI. FRIDAY, JANUARY 17, 1862.

The Convention assembled at the appointed hour. In the absence of the President, the chair was occupied by Mr. Soper.

Following reading and approval of the record, the Chair announced that resolutions or reports of committees would be in order.

MR. STEVENSON of Wood. If it requires a motion, I would move that the Convention proceed to the consideration of the additional section offered by the gentleman from Marshall (Caldwell) and the substitute of my colleague from Wood County.

MR. POMEROY. The difficulty in regard to that is that the gentleman who offered this additional section appears not to be in the house. I suppose it would be hardly proper to consider any business thus specially offered by a member in his absence. As this report on the legislative department is not finished I think it would be better to pass to the report of the Committee on County Organization until Mr. Caldwell can be present. I think we will not lose any time by this course.

MR. STEVENSON of Wood. I was not aware that the gentleman was not present. Of course, I should not have made the motion, and will withdraw it for the present.

MR. POMEROY. I move we take up the report of the Committee on County Organization.

MR. DERING. I am opposed to that motion. We will get our reports so mixed up we will not know where we are at. I think we had better keep on, and the gentleman from Marshall will be in in a few minutes. We had better wait a few minutes, and not be driving at this thing and that and get things mixed up till we will hardly know where we are. I think we had better keep on and let us bring up the substitute the gentleman from Wood has offered and discuss that until the gentleman from Marshall comes in.

MR. VAN WINKLE. That is a matter in which the gentleman from Marshall is interested.

MR. POMEROY. I insist on my motion to proceed to take up the report of the Committee on County Organization.

The Chair put the question on the motion and it was agreed to.

The Secretary reported the first section of the report as follows:

"1. Every county shall be divided into townships having an area of not less than thirty square miles, lying compactly, and containing not less than four hundred white inhabitants. Each township shall be designated "the Township of in the county of ," by which name it may sue and be sued."

MR. VAN WINKLE. Mr. President, as I have hinted on more than one occasion the Committee on County Organization was under the necessity of devising almost, if not quite, an entirely new scheme of county organization; and whatever objections arise from the mere novelty of any project that is submitted here will, of course, raise themselves against this. I apprehend, sir, that the feelings and wishes of our constituents the citizens of what is to constitute the new State, have been expressed so frequently through so many years as to convince us undoubtedly that we cannot mistake the indications that the old county system as a means of discharging the fiscal and business matters of the county is repudiated by them, and should be considered and made by us an exploded institution. In considering what should be substituted for this, for the former scheme the committee have had no hesitation in coming to the conclusion that the township system, as it is called, which in nearly all the states of the Union—at any rate, those lying north and west of us—a scheme which may be said to be perpetuated in the mode in which the general government has divided its public lands; a scheme which has many recommendations from other sources—the committee had no hesitation—for I believe there was no difference of opinion among them as to that—in coming to the conclusion that the township system in some form should be substituted for our former county organization. Of course, the whole report—every provision in it, almost—depends upon the single fact whether the first line of this report is adopted—that is, whether these words: "Every county shall be divided into townships" meet the approbation of the Convention. In order to test that question, in order to simplify it by separating it from the size of the townships and any other of those questions on which there might and will be a difference of opinion, I will move, sir, to divide the vote on this section, or will move, in the first place, the adoption of that first line, or so much of it as declares that "Every county shall be divided into townships."

The great principle, sir, of popular government, or of bringing the government as nearly as possible into the hands of the people themselves; the great principle of equality of representation wherever the business of the people is to be attended to; the convenience of bringing nearer to every man, as it were, those matters in which he has most interest, to enable every citizen to give, as it were, his personal supervision to the affairs of his county and neighborhood, all indicate that a system something like that which is proposed here, a township system—call them by what name you will—a sub-

division of the counties into smaller districts, with the view that these smaller districts shall do for themselves all the business they conveniently can and which concerns no other subdivision. And this is what the counties shall do for themselves; all the business they conveniently can, not affecting another county, leaving to the legislature to attend to that portion of the business in which the counties have an equal interest or in which all are interested more or less.

That is the scheme and principle on which this is founded told in a few words.

Supposing the counties to be divided into these townships, we then endeavor to ascertain what portion of the public business it is which the people of the townships themselves in town meetings, acting in this as a pure democracy, can best attend to in these township meetings. Whether the committee have put the matter into the best form is a question for the Convention to determine. I can only say they have been actuated by a sincere desire to place this plan as they at least thought it should stand. They have also by the creation of a county legislature—this may be thought an ambitious name for it, but it is the true technical name and makes the true distinction between the body that is to transact the business of the county and the old county court. We have created a county legislature, called a Board of Supervisors—names, of course are nothing—to which is confided the business of the county, especially that to which the attention of the county court was formerly given. The county court, as all know, was a judicial body, exercising when united as a court judicial function of all kinds, and that the members of the court which did this county business were also when sitting in the court each one a judicial officer and justice of the peace, charged with the administration of the judicial business that was not confided to the courts of record, peace officers, acting as such within their respective jurisdictions. Now, sir, whether that institution might not have been a better one if the practice under it had been different—if after they had discharged their judicial functions they could have come down off the bench and assembled in a room, sitting as a legislature, could have discussed among themselves, without hearing from lawyers whatever they chose to say on the subject, confining them, as they are confined, to written petitions and memorials; if they could have sat in that form and discussion, as is usual in a legislative body, could have taken place between the members; if the opinion of each could have been given and the vote of each taken in a proper

way—many objections to that system would have been avoided. But instead of that, the court, without being closed—sitting still as a court, under the same proclamation of the sheriff, without any order of adjournment entered on their minutes, and sitting still in the exercise of judicial functions, they undertake to do the legislative business of the county. If a citizen trail or road, if you please, of five miles opened, he was mostly under the necessity of employing a lawyer to advocate that before the county court; and then a lawyer would appear on the other side, and all the technicalities of the law would be interposed between the gratification of the wish of a few citizens of the county or town and their object. All these legal impediments were interposed and the evil was growing constantly; for it had got to be supposed all these were judicial functions; and I was not so surprised to hear gentlemen state yesterday in the debate we had that the granting of ordinary licenses had been called by some process a matter of law that could be appealed from to a higher court. It was a matter of pure discretion reposed in the county court, as many other matters of this kind must be. They could refuse to grant license according to circumstances; and whether they granted or refused, even that could be carried to a higher court! There was but one conclusion for it to arrive at and that was that whatever the county court had done the discretion had been soundly exercised. They could not go behind to look into the reasons. They had no right to supervise this matter of mere discretion in the exercise of their power of legislation. If legal steps had been taken and wrongly, an appeal lies certainly to the higher court, or could have been taken up in the way other cases are taken up; but in this exercise of discretion, the higher courts had nothing to do with that. They could return but one judgment, and that was that the decision of the county court must be final. They may in some of these cases—I do not say in the particular one before us—where they had refused to exercise their discretion, and according to law, it is possible they might have been reached by a mandamus from the higher courts compelling them to go on and act. I am not prepared to say that there are, but there might have been such a case in the refusal to do anything with it. A mandamus would certainly lie with the higher court. But here is the blending—the evil of blending—the judicial and legislative matters—the evil of reposing them in the same set of men. I would have no objection at all, so far as I am acquainted with them to take the very gentlemen for the most part who fill the offices of the justices of the peace and elect them

to the very first Board of Supervisors we have to elect. I can say so, I know, as to many of the justices of the peace in my own county. But the evil is not in this, that the men are unfitted for the position. But in reference to the legislative business of the county they are like the rest of their fellow citizens from the very fact of their own interest in it, capable of judging what is right and wrong in it. Put them into the Board of Supervisors, separate them from the influences as a judicial body and their actions would have been as satisfactory to the public as the actions of such bodies are usually. The difficulty is in blending these different functions. Another difficulty is in the mode in which they proceeded to carry out these legislative functions reposed in them. Now, when laying a levy or determining the expenditures of money raised, all these are questions of discretion. Not one of them is a question of law. Shall so much money be expended for a certain purpose, within, of course, their powers to expend it? But if that question comes up in the shape of a judicial question, shall five hundred dollars be expended in building a bridge over such a creek? Now, where is the legal point connected with that? It is a question that should be met as questions are usually met in the legislature when it comes to erecting a bridge over the Ohio river. Will the good of the public generally be promoted by it? Or if the matter is of a more private nature, can this private claim be granted or this private beneficiary act be passed without injury to the public? These are questions that involve no legal points whatever.

Now, this is the evil we propose to get rid of. Until the constitution of 1850, we had not even the hold on these justices that we had the right to elect them. They were appointed for life—that is—during good behavior, which amounted to life always. They had to behave very badly indeed if they ever got out. But it was a life tenure; for the most part they named their successors; and thus the power of the county was perpetuated in and wielded by a body which was self-perpetuating, which had the power for the most part to elect successors of their own way of thinking; and after that was done, they took and divided among themselves the principal offices of the county. The sheriff's office, the chief executive office of the county, the most important office of them in regard to private and public interests, was a mere perquisite of the office of justice of the peace! Not by law, I believe, but by custom, they took that office in rotation; and not one of them that I ever heard of ever discharged the duties of it himself. The iniquities—

for it is iniquitious, whether sanctioned by law or not—of a system under which life appointees simply divided around among themselves the most important and remunerative office in each county, need no comment. Persons who were willing to discharge the duties of the office, to undergo the personal labor for the reward became bidders for this office from the members of the county court to whom it had fallen. He who gave the most got it, or else it was given to some relative as a matter of favor; but always, I suppose, for a given price. In some cases these deputy sheriffs, as they were called—who was in fact sheriff—furnished the securities, so that the justice of the peace if he lived long enough to take his turn as sheriff got a pretty considerable plum without any trouble, risk or liability.

But I am sure I need not go on to particularize all the evils connected with the old system. Suffice it to say that whatever they were they are put an end to by the system reported by the committee; and the question now for the grave consideration of every member is whether that which it is proposed to substitute for the old system, or that which shall be substituted for it, shall be better adapted to the wants of the counties. That will depend on this Convention; and while the committee have been sincerely desirous that the great change—for it is a change, a total change you may say—should take place as easily as possible, is for the Convention to say. The committee do not suppose for one moment that they have hit upon positively the best scheme. The wisdom and anxious reflection of every member of the Convention ought to be given to this subject, and I trust will be; that we shall all approach it in the same spirit; that we will all remember that it is a novel scheme, whatever we adopt, and that difficulties of putting it into operation will attend almost any scheme you can name, because it is new in some sense—practically new to all our citizens. Some may have heard of it, read of it, but very few will have ever have been living under a similar scheme. With this view the committee has endeavored to leave as much to the legislature as possible. While indicating the principles or rules by which these bodies are to be governed, they have left it to the legislature to pass general laws—that term is, I believe, now well understood—but to pass laws which shall affect not this township or that but every township and every county in the State. And every county and township shall be equal before the law; that what is the rule for one will be the rule for the other; and gentlemen must remember that we have already on our statute books several general laws, as, for instance,

there was—I do not know, but it was perhaps in the Code of 1819; it is in that, however—a general turnpike law. When a turnpike company was incorporated it was said they were made a company for the purpose of building a turnpike over such a route to such a point; that they would be subject to the provisions of the general turnpike law; so that beyond a few local matters the whole powers of turnpike companies were the same. So, at a later date, they passed a general railroad law, and this general law is made a part of the charter of every railroad. These general laws, sir, can as well be answered altered as well as any other law on the statute book. That right is generally reserved, but we will suppose in the case of railroads. Suppose the experienced principal officers in charge of those railroads find there is a fault in the law; that some provision is too stringent, on the one hand; that some other does not go far enough on the other. Then what do they do? They do not go to the legislature to legislate for the correction of the matter in their particular case, but with a petition to alter it by a general law. Now if the amendment proposed to this general law is really a good one, every company in the State will be in favor of it; if it is one that would work injuriously anywheres, a portion at least will be opposed to it. In this way in the course of a few years what the situation and circumstances of railroad companies really demand is made known to the legislature and put practically into operation; and what at first view might have seemed to be sound provisions but which practice has proved to be otherwise, those provisions are repealed.

That is what we mean by general laws; and it was passed into the amendment yesterday that removals should be made by general laws and not by special laws. It is these special laws that occasion the long sessions of the legislature, of which complaints are made; which occasion the imputations—and I trust they are only imputations—of corruption if not of receiving bribes and so on; but all the members being moved by private interests of their particular friends, it is all these things which protract the sessions of the legislature by the endeavor of this member or that to get in some provision for the benefit of some particular party. Because it takes more time to pass perhaps one of these laws in which these private interests come into contact than to pass a law of a general character in which private interests were not so prominent.

If we could succeed in taking from the legislature the necessity of any private or special acts—and that we can in a great measure

unquestionably—they come together for the passage of those laws which affect equally every part of the State; which are necessary no doubt for its prosperity and concerning which every member comes there to express his views, the wisdom of the State is elicited in this way, and the law becomes, perhaps, in time as nearly perfect as a law can be.

But, sir, there is another point of view to which I wish to call the attention of members of this Convention, and that is to this subdivision of counties as a merely political institution; as one that is favorable to what we call political liberty and civil liberty; one that is favorable to the preservation of republican institutions; and one which derives its very existence from the attempt to reach as nearly as possible perhaps the one true system of government, were it always practicable, that of a pure democracy. Such democracies have existed in ancient times where every act of legislation was done by the whole people assembled. It is true, sir, when the great cities of Athens and Thebes, if I mistake not, lay only as far apart as Parkersburg and Wheeling, in territories perhaps as circumscribed as that of a few counties of our State—when the whole territory of Greece, lying, I believe, between the same parallel of latitude as the State of Virginia, and not of great extent from east to west, embraced within its bosom those nations whose history we read with surprise and admiration; nations in this limited territory that have given the stamp to all the civilized world; nations whose remaining works of art are superior to any that subsequent times have produced; nations whom we know to have in a dark period of the world's history to have stood out as the bright spot illuminating the darkness around them—these nations, comprised within this limited territory, which although occupying no more room than a few of our counties were able to carry out the purely democratic system. For many years, in Athens, at least, the whole people met in a building the ruins of which are still remaining, or in front of it, there to decide the legislation of their state. That, of course, is the true idea. It is the idea that when we form a little society here within our own limits for any purpose whatever, and the very principles we engraft on that society are the principles that underlie the great constitution of society itself, as it is called, wherever it exists—of every community, if it is only a township, on the face of the earth. We never think of any other thing. When we form a temperance society, if you please, it never occurs to us that one member is to have more voice in it than another; nothing but the absolute

equality of the members is ever supposed or thought of. And in the legislation of this society, in its transactions, that every member shall have his vote, is another thing that it would be supposed an unheard of matter if we should offer to change it. It has, like other organized governments, its officers by which it transacts its business; but their powers, as in a larger government, are limited and defined. In this way these societies may be considered, if they were acting in reference to government they would be, pure democracies, every member having his vote. This is the way that every member who constituted a citizen of Athens—for many were not citizens—had his direct vote on all the legislation of the country. That, sir, became inconvenient there; and it must be particularly inconvenient when a territory as large as even the proposed new State is the theater of action. The people cannot all at one time leave their business and go up to the seat of government in order to transact this business. They must therefore have the intervention of representatives. They grow out of the necessity of the case; that is, they are demanded by the convenience of the people; and it follows from that as conclusively as one proposition ever follows from another that when you go to create a representative you should confer on him no more power than is necessary to promote the convenience of the people. If you are to appoint an agent to transact even the smallest business for you, you put into his hands just so much power as is sufficient for his purpose—no more. And so whenever you select a public agent who is to administer your government in any department you should seek to put in his hands no more power than your own convenience demands and is necessary for the purpose. What you conveniently can transact, you transact for yourself; what you cannot, you place in the hands of an agent. And so in government, what you can retain in your own hands you should retain as the only safe plan; but what you cannot conveniently you must commit to agents, and place around them such safeguards and restrictions as will insure due attention to their duty.

In reference to the representatives of a people in government, we have endeavored to do this in this country. It is an avowed principle in reference to the making of the Constitution of the United States, which took its tone from state constitutions already made, and gave back the same tone to them and to those subsequently made. But it was the frequent return of these agents to their employers to receive fresh instructions; that is, in short, frequent recurrence of elections; that these agents should surrender

their power at stated times in order that those for whom they were acting might say whether they would choose to continue them in the office.

Not to protract this discussion too much—for I believe I could go on all day—is a matter I have studied for many years and have devoted some of my leisure to writing upon—I am convinced that the only safety for any people is in making their institutions as nearly democratic as circumstances will permit that the only real safety is in having them in their owns hands, and when they are obliged to depart from it to do it as little as possible; for if I had anything to call upon the putting into operation two systems one of which preserved that principle and the other departed from it, I should expect that the former only would come out right.

I wish, sir, to show that, as much as I claim to have thought and reflected on this subject; as much as I approve it and endeavor to uphold it, that the scheme is by no means mine; that it originated before I had sufficient discretion, at any rate, to reflect properly on such matters; and, as I have already shown, it perhaps is older than Christianity itself. I did on a former occasion, with the permission of the Convention—which I invoke again, if the Convention will pardon me—read some extracts from the letters of Mr. Jefferson, of which, unfortunately I have not preserved the date; but as he died in 1826 they must have been written previous to that time, but when the subject of having a new constitution in Virginia began to be agitated. They may therefore be fixed about 1820. They were the result of his preparation given to them as the result of his reflections. I did not read the whole that he said on the previous occasion, but I am satisfied there is no member here that will not be interested to hear all he had to say on so important a subject. In reference to this novelty and in reference to the fact that we are about to make a radical change, I will read also a short extract from Mr. Jefferson on the subject:

"Some men look at the constitutions with sanctimonious reverence, and deem them, like the ark of the covenant, too sacred to be touched. They ascribe to men of the preceding age a wisdom more than human and suppose what they did to be beyond amendment. I knew that age well: I belonged to it and labored with it. It deserved well of its country. It was very like the present but without the experience of the present: and forty years of experience in government is worth a century of book reading; and this they would say themselves were they to rise from the dead.

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 mankind. As that becomes more developed, more enlightened, as new discoveries are made, new truths are disclosed and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the times. We may as well require a man to wear still the coat which fitted him when a boy as civilized society to remain under the regimen of their barbarous ancestors. It is this preposterous idea which has lately deluged Europe in blood. Their monarchs, instead of wisely yielding to the gradual changes of circumstances, of favoring progressive accommodation to progressive improvement, have clung to old abuses and entrenched themselves behind steady habits and obliged their subjects to seek through blood and violence rash and ruinous innovations which had they been referred to pacific deliberations and collected wisdom of the nation would have been acceptable and salutary forms. Let us follow no such examples, need we believe that one generation is not as capable as another of tinkering of itself and of ordering its own affairs."

—Extract from letter of Jefferson to Mr. Kercheval.

It will be remembered that Mr. Jefferson was writing nearly fifty years after the Declaration of Independence. He considered himself to be a part of the former age; that is, as I understand him, the age which gave a start to this great country. He says: "I knew that age well: I belonged to it and labored with it. It deserved well of its country. It was very like the present but without the experience of the present." With them it was an untried scheme, to a great extent; "and forty years of experience is worth a century of book reading; and this they would say themselves were they to rise from the dead."

A gentleman called on Mr. Webster once and found him reading Shakespeare. A conversation arose on the book, and Mr. Webster asked his visitor which play of Shakespeare he preferred. His visitor, who was probably from the same section of country, Yankee land, answered by putting the same question to him. Mr. Webster thought a moment and said, that the play he read last was the best. And so it seems with these papers, as it were, of Mr. Jefferson's. The one you have under consideration seems

always to be the strongest; there is so much of forecast, so much of simple-mindedness in reference to results; so much love of country; so much statesmanship in all that he has left us of the productions of his mind, that we are almost astonished when we get hold of them, at not merely the wisdom but the foresight they evince.

I now come to another extract which I beg leave to read, more at length than in the former case. He says, after recommending the equality of representation and an elective judiciary, now, I believe that was before anybody else had talked of such a thing. He says:

"The organization of our county administrations may be thought more difficult. But follow principle, and the knot unties itself. Divide the counties into wards of such size as that the citizen can attend when called on and act in person. Ascribe to them the government of their ward in all things relating to themselves exclusively. A justice chosen by themselves in each, a constable, a military company and patrol, a school, the care of their own poor, their own portion of public roads; the choice of one or more jurors to serve in some court. The delivery within their own wards of their own votes for all elective officers of higher sphere will relieve the county administration of nearly all its business; will have it better done, and by making every citizen an acting member of the government and in the offices nearest and most interested to him will attach him by his strongest feelings to the independence of his country and its republican constitution. The justices themselves chosen by every ward would constitute a county court, would do its judiciary business, direct roads and bridges, levy county and poor rates and administer all the matters of common interest to the whole county. These wards, called townships in New England are the vital principle of their governments and have proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of government and for its preservation. We could thus marshal our government.

"First, the general Federal Republic for all concerns foreign and federal;

"Second, That of the State for what relates to our citizens exclusively;

"Third, The county republics for the duties and concerns of the county, and

"Fourth, the ward republics for the small and yet numerous and interesting concerns of the neighborhood.

"In government, as well as in every other business of life, it is by division and subdivision of duties alone that matters great and small can be managed to perfection; and the whole is cemented by giving to every citizen personally a part in the administration of public affairs."

In a letter to Major Cartwright after stating that it was proposed to call a convention to revise the constitution of Virginia, he says again:

"Among other improvements I hope they will adopt the subdivision of our counties into wards. The former may be estimated at an average of twenty-four miles square. The latter should be about six miles square each, and you answer to the hundreds of Saxon Alfred. In each of these might be

"First, an elementary school;

"Second, a company of militia with its officers;

"Third, a justice and constable;

"Fourth, each ward should take care of its own poor;

"Fifth, their own roads;

"Sixth, their own police;

"Seventh, elect within themselves one or more jurors to attend the courts of justice;

"Eighth, give in at their folk-house their votes for all functionaries reserved to their election.

"Each ward would thus be a small republic within itself; and every man in the State would thus become an acting member of the common government, transacting in person a good portion of its rights and duties, subordinate, indeed, yet important and entirely within his competence. The wit of man cannot devise a more solid basis for a free, durable and well-administered republic."

If there ever was emphatic language it is embraced in these extracts. No one can be left in doubt a moment as to this great statesman, one who had exhibited so strong a regard for the welfare of his country. We cannot suppose this man, with such grasp of

mind as he possessed had not studiously and deeply examined this subject; and that these are not the conclusions or notions or whims of a day, but that they are the conclusions of the best reflection he was able to give to that subject.

It is true, sir, this report departs necessarily in some things from his scheme, although even that one would be so novel here that no one would think of adopting it; but even that proposition to elect the jurors is worthy, I think, of consideration. We have progressed some since the time of Jefferson; or, if we have not progressed so rapidly, they have been progressing all around us. Circumstances and influences have been going according to his views we must adapt ourselves to the present times and not to those which are past. But the principles he has laid down which are to be the salvation of free government, as he contends, because they make the safest depository for it, are as eternal as the hills. Principles can never die if they are worthy of the name. Principles survive all else and all changes of humanity. But it is in the application of them that changes are required. In order to carry out the same thing sometimes, perhaps at one time you make a different body of men or a different feature from what you do at another. So far they may change, but the principles themselves remain. The principle here is to bring right back into the hands of the people the exercise of the powers of government. I say bringing it back, for it has escaped them wonderfully in Europe, escaped them a good deal in this country, and a good deal in this State. But the bringing back into the hands of the people the direct administration of such of their own affairs as they can transact with convenience to themselves is the object sought. Their convenience being, in my opinion, the only measure of what is proper to put into their hands. And Mr. Jefferson has the very idea, tracing it down through our Federal Government, which is in charge of our external relations and those relations in which all the states are interested, leaving to each state the administration of those affairs which pertain to itself exclusively; and then proposes to carry this system further by confiding to the counties that which in our history has been a great deal confided to the legislature, and confide to these bodies, where it may be safely confided if properly constituted, to these county boards much that has heretofore been transacted at the capital; and then, to come still nearer to the people, as he says it may be convenient for every man to attend to it because he would not have to go far in order to do it, he proposes these subdivisions of the county and makes the people

themselves living within the township or territory, makes them actually the government itself for such matters as pertain exclusively to their townships, by their own votes at their "folk-house," the old Saxon term. And it is no doubt true, what he wrote to Major Cartright, that we are going back to the same principles that prevailed in the days of our remote English forefathers—in the time of Alfred, one of the remarkable men who has sat on the English throne, who have had so many. These institutions in the hands of the people have been the safe-guard of liberty everywhere. In the history of modern Europe we find that the associations of the trades—as, for instance, the clothiers or the fish-mongers, as in London, and other bodies engaged in different branches of business, in many of these cases they were the saviors of the liberties of their country. We find these "Guilds" as they were called, on the continent, gradually obtaining certain privileges; and then when the struggle for liberty commenced it was always the guilds fighting for the liberty they had thus acquired. Well, we find it to some extent the same in the boroughs of England in later times—contending for privileges and resisting the crown in its efforts to subvert them. The whole of history is full of it—these corporations, or whatever you may call them—these guilds—that they were where all the liberty was during the dark ages of Europe.

But we propose now not to take a separate trade or profession and erect them into a guild, but to divide the whole State into small territorial departments and erect a corporation, with its own privileges right there in everyone, consisting of the whole people of the township. We will not have a centralized government even in the State such as France is at this day; such as it was under the republic of Lamartine and lost its liberty. Paris was France; and when Paris was subdued, France was subdued. A French friend of mine of republican principles asked me at the time if I thought that republic would endure. I replied to him that if they would decentralize; if the prefects of the departments were no longer to come from Paris, if the people were to be allowed to elect their own county rulers, they might maintain their French Republic. But that if they were to pursue that system of centralization which has always existed; if the prefects must be sent out from Paris and, of course, be in the pay and under the sole influence of the central government at Paris, they could maintain no republic, for it was contrary to the very idea of one. I think, sir, but one of the different riots intervened before it brought us the news that

the French Assembly, deliberating from day to day, concluded these prefects should be still sent from Paris. I prophesied then that their republic was gone; and if it had not been overthrown by Napoleon usurping the power, it was gone practically and would have become the spoil of some other usurper, for there was nothing in such a system as could be called a republic.

I call attention particularly to that idea of Mr. Jefferson that this is the best organization for the preservation of the liberties of the republic; and it is the best always because of what I have already adverted to several times, to place the matter in the hands of the people themselves. We need not ask whether these people are capable of managing these affairs. We do not want to know how much book learning, how deeply studied in the principles of government. It would be well if all would pay more attention to these things. But what we do know is this, that when acting in their townships and acting in their counties also, they are acting on matters which come home to their own business and bosom. The citizen is interested. The controlling motive with mankind is self-interest, not always an improper one if a man will take an enlarged view. It includes the welfare of others. It will dictate to them what measures are proper. They will know whether their situation demands an improvement here or can spare it there; whether money may be expended here or could be saved there; whether these officers who are going into these matters so near to them are discharging their duties. They will see it, for it is under their every day observation, and those must be very blind to human nature and to the character of human nature if they suppose that having detected improper practices in these offices that even the strong links of party can bind them to re-elect them. They may do it without knowing or caring much who we have elected as members of Congress. We did not know how Congress operates on us until this war broke out. We never felt the United States Government before. We had very little interest in the money of the government. It is true it was as efficient for our protection as now, but it did not press itself home to us as in these matters that lie nearer to our daily business. We might then be careless about who we would elect to Congress; but we would not be so careless about who we would elect to the county legislature. We know the action is to be on us, and our own interest, feelings and regard for our own self-respect would lead us to select proper men.

And look what a school it is. I have said in reference to some nations when I was told that they could not bear liberty; that the South American republics, for example were not fit for liberty, I replied: That you did not give them liberty enough. There you had the centralization again. The people had nothing to do but to elect the members and officers of the government. Give them the direct charge of those matters which come right home to them and they will know how to discharge their duty in reference to them; and this, as I have said, is a most excellent school to teach them to act correctly in regard to their interests in other quarters. For they learn to canvass the character, meaning and how to administer their township affairs, because they are obliged to look into them, their interest being so nearly connected with it. It is the same in regard to their county officers. They are obliged to look into his character and watch the operations of those they invest with power in order to see that the principles on which they are based are being carried out and to learn what those principles are in practical application. Tell me if after a few years have passed spent in this sort of education, whether the people of this new State that we propose to erect, with such an education in reference to public matters it will no longer be possible to deceive them by sending inferior men to the higher legislative bodies, the state legislature or the Congress of the United States. No, sir, by keeping these matters out of the hands of the people as far as possible; by doing as the new constitution recently made for this state does, take away from the people again everything except the election of members of the legislature and the governor, I believe; or, as South Carolina has done, take away from the people even the choice of presidential electors—they sink down into apathy. They are not permitted to take an active interest in these matters, and they will cease to take any; and the oligarchy that is thus created over them still more and always steadily encroaches on their liberties until their liberties are gone.

These, sir, if the other reasons were not as forcible as they are, if there was not a practical and immediate benefit to flow from some such system as this, yet in the views that I have given and perhaps others that could be stated, they are the great preservers of republican liberty and republican institutions—this system of townships ought to be adopted. I do not believe, sir, enthusiastic as I may be, if you please, to call it so, in their favor, I do not, from the best reflection I have been able to give this subject, that in striving to make my remarks forcible here that I have exagger-

ated in the least degree the benefits they may confer upon us; not, perhaps, immediately, because we want a practice under it. Then, sir, let me conclude by saying that if but a tithe of the benefits and advantages which I have mentioned are to be derived from institutions of this kind if this Convention shall conclude to adopt this kind of organization and division into townships, let me ask that every member will endeavor to view the subject as free as possible from all local influences and will endeavor to institute a system in its purity, adapting it to our present situation in the new State, guarding in every possible way against abuse and confirming the grand leading principles of republican government, giving the people the administration of their own affairs as far as possible. Convenience demands this division into townships; and the evil of small counties, as I have already indicated on this floor, will perhaps be done away with by the very fact that they will no longer be cared for. The greater part of the business is not to be done at the county seat. It will make a more equitable distribution throughout the whole territory of the State of these things in which the county interests have had some advantage. But these are minor considerations; and I confidently leave the subject with this Convention, believing from what I have seen here in reference to other matters that this subject will be approached with a sincere desire to retain at least all the benefits of which it is capable.

MR. BROWN of Preston. I move to strike out the word "townships" and insert "districts" in lieu thereof. I have no particular attachment to names; yet the gentleman of this Convention will remember that the people of the State of Virginia, at least for the last ten years, have been accustomed to districts. I think the word is preferable to the word township. There is a prejudice, I confess, in my own mind against this word and there is a prejudice, I believe, on the part of the people of Virginia to the word township. It is a Yankee institution, and some of them at least have very serious prejudices to institutions coming from that quarter.

MR. BROWN of Kanawha. I move to amend the amendment of the gentleman by inserting in lieu of "districts" the word "parishes" (Laughter). I fully concur with the gentleman that in adopting new and radical change it were best to preserve language with which we are all familiar and that has rather Virginia vernacular. Township is a word that has been sought to be introduced into our state on more than one occasion. The convention of 1850 had the same question up and excluded it. It is a New Eng-

land name I believe peculiarly; and while I am one of those who are never averse to taking anything from New England or old England that comes to us on its merits, yet have a preference arising from familiarity and prefer that which is my native country's. Parish is a Virginia word; rather an English word, and has come down to our people from the earliest settlement until its abolition under the state government as formed in the revolution. Still it is retained in many respects in our books; and I do not know but some parishes still exist in a not local form; but land that belonged to several parishes of Virginia are some of them questions not disposed of. It is said there is much in a name; but I confess that whenever a thing is presented to you in a form that is familiar by association it is always preferable, particularly if the one or the other seems to make a distinction and to give a preference to that which is not Virginian to that which is Virginian. There is another reason for it, and that is the simple merits of the words. Parish is a simple word easy of enunciation. Township is a compound word, rather harsh and not euphonious at all. So that in every view parish is preferable to township and I think equally so to district. District is more objectionable than parish from the fact that that is a word that means not the peculiar idea that will be attached to this territorial subdivision but the larger area or extent. It is a word of much larger latitude. So that I decidedly prefer parish to the other words proposed.

MR. POMEROY. As a member of the committee, I am opposed to the amendment that is presented to the amendment. I cannot see that "parish" would be a preferable word to the word "township." Parish is strictly an ecclesiastical word and has reference to the boundaries included within a minister's congregation. I do not think that would be proper in this case.

In regard to "district" I would say that we have the legislative districts, the senatorial districts; we have the congressional districts, the judicial districts; and it is a complication to call the townships districts or have the county divided into "districts." I would rather have what we now call them—I would rather call them "precincts"; but I think "township" is the preferable word. Mr. Jefferson suggested the word "ward," but I am not favorable to that. I am in favor of the report of the committee in this respect. I will therefore give my vote against the amendment to the substitute—"parish."

MR. MAHON. Having the honor of being one of the members of the Committee on County Organization, this question was before that committee, and the committee adopted the name "township," as I understood it, for convenience' sake. The names "ward" and "district," however, were before the committee. I do not think that there is anything particularly in the name. I do not think there is; but as the gentleman from Kanawha thinks something that is familiar to the Virginia people should be adopted, I should think "parish" would be a name as new and strange to the majority of the people in Virginia as "township," and a good deal more so. Some gentlemen seem to object to the name because it originated up here in the North. Well, now, I am very fearful, Mr. President, that others in West Virginia might object to the name "parish" from the fact that in Louisiana they have their parishes, and it comes from the South. I think objections of that kind are very weak, and should not have weight in the minds of this Convention. I know of no name at the present time that suits me better than "township." I have no objection to ward or district only that we have the different districts named in the Constitution. I think township would be the best name to adopt.

MR. LAMB. I believe the Yankee term is "town," not township. Township is a Pennsylvania establishment I know, because I came from Bullskin Township (Laughter). Township is an United States word. All the public lands are divided into townships.

MR. STEVENSON of Wood. I was just going to make the remark made by the gentleman from Ohio in reference to Bullskin Township; but the fact that the public lands are laid out into townships —that seems to me to be an important consideration, because it will conform the organization of the new State to probably a larger extent of territory than is settled even at the present time when that land is settled up.

There is another consideration, sir, that has been adverted to slightly, and that is this: that we have already provided for districts for congressional purposes, for senatorial purposes and for house of delegates; and as the other reports come in—for instance, the school report—we will have, I suppose, school districts; so that it seems to me to adopt the name district for these proposed county subdivisions, we will complicate the difficulty. I think we will have, as it will be without adopting this amendment, probably too many districts already.

There is another consideration that has been alluded to and that is this: that by preserving the name "district" the matter will become mixed up in the minds of the people in this way and lead to a difficulty that we have had heretofore. For instance, magisterial districts will be confounded in the minds of the people when you speak of a district with the districts which we will adopt here and which we propose to call townships. I think as a matter of clearness and convenience it would be better not to adopt the word "district" although I have no special objection to it on any ground. I think, though, the term "township" is better understood even by the people in western Virginia than any other name you can attach to a subdivision of a county—better understood by a majority of the people; and I think it will continue to be better understood as we progress in the new State. Some of these objections will lie against the amendment offered by the gentleman from Kanawha, and the other objection alluded to by the gentleman from Hancock, that it is, I think properly, understood to be some ecclesiastical division of territory rather than one for political purposes or the purposes for which people use such divisions. It is so regarded, I believe, even where it is preserved in this country, at least to a great extent. It is certainly that idea that is attached to it in the older countries, almost universally so far as my reading of history goes. Besides, sir, it is a name that I do not think is understood so well by the people of the new State as the word "township" or even the word "district," so that I think it is even more objectionable than district; and neither of the names so much desired as township for the reasons which I have given; and I hope both amendments will be voted down and the name reported by the committee will be preserved. I was sorry to see the name objected because it was of New England origin. Twenty millions of American people have adopted, in substance, the township. Twenty millions now American have adopted what Mr. Jefferson recommended, what originated in New England, what received there the name of township and which has been so ably presented here by the gentleman from Wood (Mr. Van Winkle). Twenty millions of the American people have adopted the thing in substance; they have also adopted the name. The United States government has adopted it for the subdivision of the great public domain which will in time be the homes of a hundred million more American people. I was sorry when it was contemplated to adopt this form of subdivision for this new State that these attempts should be made to excite prejudice against the

word because it had been first employed by our fellow-citizens in the North. "Parish" is no more known in western Virginia. It is only peculiar to Louisiana and South Carolina. Just at this time we are not looking to South Carolina for examples.

MR. VAN WINKLE. The whole territory of the new State is divided, I believe, by the Episcopal church into parishes. They use the term to apply to the extent of the jurisdiction of every preacher.

MR. PARKER. There is an insuperable objection to the word "district." We are filled with districts—some five or six kinds, as gentlemen well remarked; and it seems to me a conclusive objection. Do you want to pile on another district? Township is a distinctive name. It could never be mistaken for anything else.

MR. BATTELLE. If you please, Mr. President, I do not want to make a speech, but let me correct one remark dropped here. I think that very much more than twenty millions of people of this country have adopted this thing and to a general extent the name. The land sold by the United States is divided into districts of country, usually called townships, throughout the Southwest, in Alabama, Georgia, Mississippi, Arkansas, and throughout all the western states. By far the largest portion of our territory, South as well as North, is divided into that sort of districts and usually under that name. The United States calls them "townships," not towns.

MR. BROWN of Kanawha. I am by no means satisfied that the gentlemen from Wood are correct and that this name is adopted by the general government in application to lands belonging to the general government and being sold out; and I would like to ascertain from the gentlemen how it would affect my view of the case if it was so. But I think they are in error. All I have ever known of the public lands was a simple adoption of those lands into sections and so on, whenever a territorial government chooses to fix names to those subdivisions.

MR. LAMB. There is no doubt that the United States have adopted townships, sixty-six miles square.

MR. BROWN of Kanawha. It may be so, sir: but whether or not it has adaption to us is the question here. I confess in the selection of a name I prefer that which is more familiarly and emphatically a Virginia name. There is no reason here except the

mere preference about a name. The thing is the same whether you select township, district, parish, section, or any other name. It is a mere name. Because it is a New England name and parish more particularly a Virginia name, I prefer the parish. It has another preference, that it is a simple name: not a compound word even. There is another consideration that strikes me if this section is to be adopted, about which I now express no opinion, and do not discuss the merits of the case. I am determined to hold myself open to all the arguments and lights that can be thrown on the subject by the papers now under consideration. But I say, sir, that the radical changes you are proposing to introduce in your Constitution may commend it in some respects to the popular wish but it may, on the other hand, meet popular prejudices; and I wish it distinctly understood, so far as I am concerned—and I know what the feeling of the people of Virginia is—that the popular prejudices and sentiments of those people, without regard to whether they have or have not any reason for them, should receive due consideration here. When you introduce radical changes, it is not necessary to needlessly imperil the success of what is good by this kind of a name which will meet the prejudices of the community whether unfounded or not. The gentleman tells us the parishes of Louisiana are ecclesiastical divisions there. They are political, legislative or constitutional subdivisions. They were adopted there by Mr. Livingston of New York, who wrote the constitution of Louisiana, as comment says, because they are southern. I consider myself, and every Virginian—a part of the South. We are all southern people; and I have yet to learn that we have any prejudices against that which is southern because it is so, apart from the rebellion that is going on by those who are warring against our institutions and government. I imagine we are all southern people as much as ever we were, with southern prejudices and preferences; and when a mere name is addressed to me which in itself has no particular preference, it does not commend itself to my favor at all because you select the name that wears a prejudice from the other side. The very difficulties that are now existing have arisen out of these grounded prejudices in both sections of the country, and because of the eternal agitation of men that are purely sectional in character and determined never to let the people alone or attend to their own business.

I, therefore, decidedly prefer "parish." Because they are ecclesiastical divisions that can be no difficulty. There are all sorts of churches and there is no clash between their ecclesiastical

and civil jurisdiction. There can be no objection urged against it on that score. The simple question addresses itself to us is a word which has come down to us from the English nation into our colonial government and then on to the revolution—whether we prefer that to a new introduction which comes from a local and is purely local in its introduction now. I have no hestitation in decidedly preferring "parish."

MR. BATTELLE. It seems to be a sound principle that of two competing things or names, both equally good, sound wisdom will always dictate that we take that which the people are most accustomed to, both being equally good. But it seems also still further to be a part of that principle that of two competing things one of which we have had, the other of which we have not had, that if the one we have had is determined to be the best thing that we are to take it, whether we have been used to it or not. It seems to me that to proceed on any other principle here in our deliberations is to forego, at least in great part, the very object for which we are assembled here; that is, to collect together from every quarter and every place from the results of the experience of the world that which has proved to be, whether among ourselves or others, the best thing adapted to our purpose. Now, I hardly know whether it is necessary to state or elaborate that principle in view of the matter on hand because it really is not a matter in itself, the mere question of a name, which should detain the Convention any great length of time. The gentleman from Kanawha insists on the use of the word "parish" because it is a Virginia name. Well, now, even on the hypothesis that we ought to take the name on that ground, it seems to me the gentleman is in error. It is not, I beg leave to say, with all due deference to the gentleman, a Virginia name. It was originally known and used simply and chiefly as an ecclesiastical name, as a name devoted to ecclesiastical purposes in England. It is now known as a division of political or geographical territory in South Carolina; but it is not known and used in Virginia. If I mistake not, it is not employed at all in the present constitution of Virginia. Now even if Virginia did once employ it as a political division, and has abandoned it, for any reason whatever, the question is: shall we for the simple reason that Virginia once did employ it go back and take up what she cast aside for reasons which were sufficient for herself, of course, in casting it aside?

The question was taken on the amendment to the amendment (to substitute "parish" for "district") and it was rejected.

The question recurring on the amendment, to substitute "district" for "township," it was rejected.

The question was then taken on the motion of Mr. Van Winkle to adopt so much of the first line of the report as reads: "Every county shall be divided into townships" and the motion was agreed to.

The residue of the section being under consideration,

MR. STEVENSON of Wood. I move its adoption, sir.

The Secretary reported the full section:

"1. Every county shall be divided into townships having an area of not less than thirty square miles, lying compactly, and containing not less than four hundred white inhabitants. Each township shall be designated "the Township of....., in the county of .....," by which name it may sue and be sued."

MR. CALDWELL. Mr. President, if I understood the chairman of the committee in his remarks, which we listened to with profit and patience, he regarded the action of this Convention on this first section as the test of the question on the whole report. I do not know why he bases it on that ground. Now, for myself, sir, I might be disposed to adopt this first section—that is to say: that the counties should be divided into townships, and might be opposed to other sections of this report. It is to have an understanding from the chairman of the committee whether that is his view, sir, whether I am mistaken in it or not that I have arisen to ask the question.

MR. VAN WINKLE. I do not understand the gentleman.

MR. CALDWELL. I understood the chairman to say that he regarded the action on the first sentence as the test consideration of the Convention on the whole report.

MR. VAN WINKLE. Oh, no, sir. I only wanted it to vote that way because it is evident—very evident—that if the Convention had voted negative on that the whole report must go back and nothing could be done with it. I thought it best for the Convention to express their opinion, which they have done.

MR. CALDWELL. I beg leave then to call attention to the first provision, which is that the counties are to be divided into townships and that these are to be not less than thirty square miles in area and are to contain not less than four hundred white inhabitants. Let us take the case of Ohio County. By this division, you would necessarily have to divide her into townships of not less than thirty square miles. You would make, as I understand it, only two and one-half, or less than half, townships in Ohio. Some of these would contain much more than the number of inhabitants required. You might secure the election of more justices and more supervisors according to the number of inhabitants in these townships; but, sir, then you provide in the second section for only one supervisor for each township and one clerk of the township. Now, sir, it seems to me that in referring to the situation of the county of Ohio, because it is a small territory, and when you come to these small counties in the State—take Tucker, for instance—you divide that county into townships of not less than thirty square miles, and you necessarily have to increase the size of the township to get the four hundred inhabitants. In Tucker, with a small population, and I think, sir, a small territory, you would have a difficulty in arranging and forming these townships.

I make these remarks to call attention, especially of the committee, and that of the chairman of the committee, to this probable difficulty in arranging these townships.

MR. LAMB. Mr. President, I move to strike out from the word "having" in the first line the words "an area of not less than thirty square miles," so much, in short, of that section as prescribes the area. I do not see how the section could be applied, in Ohio County, for instance. If you require an area of not less than thirty square miles, Wheeling must be one township, with an adjoining territory. If the plan is to apply generally throughout the State it must in certain cases render these townships unwieldy, so that it would be impossible for the inhabitants to meet together to transact their business. Defining the township by the number of the white inhabitants alone, it strikes me, will enable the system to operate more properly.

MR. HERVEY. Lest the Convention might not be disposed to come at once to the proposition of the gentleman from Ohio I have an amendment to his amendment to offer, to strike out the word "less" in the third line and insert the word "more"; which would admit of smaller subdivisions to any extent desired. It would be

certainly true that the rule laid down in this section could not be applied to the panhandle counties. We have about eighty square miles in Brooke County and between five and six thousand population. This provision would give us perhaps less than three townships; which would cause two townships to have a population of about 2500 each. By the present article of apportionment, our county is divided into four districts. That would suit us better. Each county could then be districted to suit the weakest sections, while more sparsely settled counties might perhaps desire to have the full number.

MR. SINSEL. Mr. President, I am opposed to the amendment of the gentleman from Brooke, to lessen the number of square miles.

MR. HERVEY. That does not do it, sir, absolutely.

MR. SINSEL. Well, that is still worse. They may make them larger. The way it is now—the way the report of the committee stands—they cannot make them less but they may make them to contain a hundred square miles. I would surely prefer that. If they will look at the officers that are created by these subdivisions and the expense that the county will incur from them, I think they will find a serious objection. Now, suppose you take an average of 480 square miles for the county; and 30 square miles as the least: that would give 15 townships to each county on an average. Well, these 15 townships, with a population of 9000 on an average numbering 600 would be entitled to 15 supervisors. Now, there are 15 officers to start with. It would then be entitled to 15 clerks, one for each township. Then would follow 15 overseers of the poor. Then the least number of justices of the peace would be 15 justices, and of constables the least number would be 15. Then one clerk of the county. Now, these are additional officers created by this arrangement with a few exceptions of justices and overseers. The sum of these officers would be 76 officers now created by this township arrangement, or these divisions, all to be paid at the expense of the county? And that is not all. Here the people are to assemble in person in these townships at stated periods and transact the business of their township in person. Well now, it is an old saying and a true one that a man's time is his money. When you take the loss of time in attending these meetings, then the amount of money that you would have to pay to officers, I believe they would begin to cry out, "Would to God

I was back in Egypt again" (Laughter). It does seem to me so. Now, I prefer the old division as made by the last convention of Virginia. Counties might be divided into districts or townships; I would say not less than four and not more than eight; adopt this division of the gentleman from Brooke and you may make thirty or forty instead of fifteen. If you made it thirty, which it is liable to be, then instead of 76 officers you would have twice the number. Well, now if these officers are allowed a per diem of three dollars a day, or two dollars, and meet and hold adjourned meetings, you have your thirty supervisors assembled in legislative form transacting business at three dollars a day and two dollars a day, would there not be a strong temptation to go on and protract business; and where would the expenses end? Instead of adopting any amendment which will increase the number of the townships we ought to be very careful to lessen them in order to save expenses.

MR. BROWN of Kanawha. I am opposed to the amendment of the gentleman from Brooke. My county, sir, has 750 square miles. If this amendment should prevail it would require that territory to be divided into 25 townships; and my mind has taken somewhat the turn of that of my friend from Taylor in looking over the offices to be provided under this section. I find that in my county there would have to be 25 supervisors, 25 clerks, some surveyors of roads, one overseer of the poor; making according to the estimate I have made, 150 officers aside from the number assigned to precincts. Then in addition to that, there is a clause at the end of the sentence "and such other township officers as may be directed by law." How many they would be I am not prepared to say; but a friend has made the calculation making the number of officers under this system in a county amount to about 300. This is a little too strong for me. So I am certainly opposed to any such system. I do not think the people will submit to a system that creates such a vast number of office holders. I am certainly opposed to the motion of the gentleman from Brooke.

MR. LAMB. The gentleman from Brooke, if he will reflect on the character of this amendment will see that it involves a physical impossibility. Take Tucker, for instance. These townships are to contain 400 white inhabitants. There cannot be over three townships in that county, upon one clause of this. Well, Tucker certainly does not contain less than 300 square miles in area; so that the two clauses could not operate together with his amendment.

MR. HERVEY. I will with leave of the Convention so change my amendment as to relieve it of that objection. I will move to strike out the words "and containing" in the second and third lines and insert "if it shall contain," making the districts conform where the population is sparse; making them at least include 400 inhabitants. That would relieve it of the objection referred to by the gentleman from Taylor.

MR. LAMB. I yielded to the gentleman from Brooke for purposes of explanation, but I did not quite finish my remarks. I wanted to finish by apologizing to the gentleman from Tucker for citing that county as an example again in the discussion; but it comes in so often as an illustration, I hope he will accept the apology.

MR. BROWN of Kanawha. While I was struck with the theory of both Mr. Jefferson and the gentleman from Wood, which like a surveyor in his office drawing diagrams on paper, works beautifully I could not but think of the difficulty of the application when you come to apply the principles on these rugged hills. Take Tucker (the best one) or McDowell, and you have a county of perhaps 450 or 500 square miles in either of them, the country in sitting on its edge. But I do not in this computation mean to use the hillsides but take the base. In this each district is to be not less than 30 square miles and to contain not less than 400 inhabitants. Now, survey off your 30 square miles and the surveyor will run the angles and from that determine where the 30 square miles will be, and then you will come inside that line and count the people and find that there are 400 in it. You will find about 50 or 100; you will find your rule will not apply; and you then increase your number of individuals and count the 400 first and run your line to include them; and then you will find you have got a much larger area. Well, you will continue on and we will soon find you will include half the county before you have gotten half the number; for these counties are not settled precisely equal. Some sections of them are settled thickly but in the more mountainous districts there are scarcely any settlements at all. That will be one of the difficulties which I suggest in the application of this system to a country like ours. Its application to the western plains where they have flat lands and good lands already settled pretty much, an average like 30 miles square will be like any other equal area. You can lay off your townships there and have the people in the district that they can all reach one point to attend to ordinary busi-

ness. When you come to apply that to this country you will find it very difficult to make it apply at all. If you throw your district into squares to get the smallest area you will find this is thrown on one side of a mountain range across which there is no access between populations living on one stream and those on another, and have perhaps twice or thrice the distance to the center of the township to communicate and go by the other fork. I know something of this country; and I think gentlemen will find the application of this rule will be very different from what they anitcipate.

And while I take no ground against this report now, while I say in all candor I come to the discussion of it with a disposition to hear all that can be said in its favor, I only throw out these suggestions of difficulties and make the effort to reconcile them before I am called on to vote.

MR. HERVEY. The gentleman must have misunderstood my proposition, which was simply this, that the districts shall not be divided into townships of more than 30 square miles unless the population is 400. That is to say that if there is less than 400 of a population within the prescribed district that then we might have the power to go out and include the sufficient number of population to make 400. It provides against the very thing which the gentleman apprehends: that is to say, where there is not 400 population within the 30 square miles they may go outside of that limit until they get that population and add the necessary territory on their area. This provision would allow them to go both below and above and thus accommodate the size of townships to circumstances.

MR. LAMB. Will not the object of the gentleman be attained precisely by striking out the word proposed in my motion?

MR. VAN WINKLE. I am inclined to favor the amendment proposed by the gentleman from Ohio. I see there is a difficulty in the practical working of it. Judging of myself, I may say what the committee had most in mind in making these limits was the first arrangement of townships. It is intended after they are once erected a mode is proposed by which their boundaries can be altered, in which if a township is found inconvenient and operating against the very object it is designed to promote it can be changed. And I apprehend that in the schedule we will have to devise some way by which the townships can be laid off and that in doing that we can give general directions; as, for instance, if this clause which

is now proposed to be stricken out was thought of that much importance it could be placed there, that they should be divided as nearly as possible where circumstances would permit it. But I perceive it is difficult, from the sparse population in some districts of the State and from the comparatively denser population in others to fix a compound rule—that is, one that shall involve both territory and population. I think as the power to create new townships in the county is preserved that probably to follow the amendment of the gentleman from Ohio and strike out the restriction so far as it is territorial, leaving it simply as to the minimum number of inhabitants so that there shall not be too many, would perhaps be the wisest course at present; but if when the schedule is to be made, if it is thought best to provide for the laying off of townships in the first place, rules can be given that may be applied in the first instance that may possibly serve as permanent rules. I am in favor of striking out.

I would like, while I am up, to answer a remark made by one of the gentlemen, from Preston, I believe (from Taylor), in reference to the number of officers and expenses. I have stated my belief here on a previous occasion that it would be a cheaper government than the old, and I am very much inclined to think our officers, if you are going to count the county legislature, who are to officiate at a single town meeting in the year, counting them as officers that are to be paid, it may be different.

The objection is to remunerating the officers of counties and townships as we do in cities and towns. But in my town, where we have three thousand inhabitants, we pay the members of the council nothing. They meet once a fortnight and generally get through business before ten o'clock. The councilmen of the city of Wheeling get no pay. These men are only required to meet four times a year; and even if any compensation is given them, which is left to the legislature to fix and can be changed according to the wishes of the people of the State, generally, why for the extent of the services the compensation must be very trifling, indeed. So it is with the township clerk. He is to keep the record of the township meetings. It may be convenient that he should keep a record of some other things; but his principal duty will be to attend the general township meeting which is held once a year; and if you give him a dollar or two for that and the other things that he does it will still be a very small matter for the township. I think the clerk of the town council at Parkersburg gets $150 as a salary, and he attends 24 meetings in a year and certainly besides several

special meetings. Gentlemen will find, I am persuaded, they will get a cheaper form of government than they did before.

MR. DERING. I think it is apparent to the whole Convention, sir, that this thing of connecting area and population in laying off our townships is not practicable. I would suggest to the gentleman who moved to amend the amendment of the gentleman from Ohio that he withdraw it.

MR. HERVEY. I would say that as my amendment would accomplish precisely the same thing as that of the gentleman from Ohio, that I will withdraw it. They are identically the same though expressed differently.

THE PRESIDENT. The question is on the amendment of the gentleman from Ohio, to strike out the words defining the area.

MR. POMEROY. I am in favor of that. I think we can get along by some insertion afterwards.

The question was put and Mr. Lamb's motion agreed to.

Mr. Ruffner rose.

MR. VAN WINKLE. I was only going to explain in reference to this last clause that it makes the township a quasi-corporation particularly for the purpose of suing and being sued in order that persons who have claims against the township can resort to the courts to have them settled, and also that there may be no doubt—because where some of these subdivisions exist there have been doubts arise as to their rights to sue. This is intended to anticipate any difficulty as to that question and the same with counties, which gives them a name by which they sue and are sued.

MR. RUFFNER. I will move, in addition to the words that have been stricken out to strike out the words "lying compactly." I think practically as much difficulty will result in the arrangement of these townships under a restriction of that sort as in the limitation of the number of square miles allowed them. It is impossible, sir, that they should be strictly carried out in any arrangement of townships in the mountainous counties. I therefore move to strike out those words and give a general discretion to the courts to arrange these townships.

MR. VAN WINKLE. I have no objection myself. These words were intended to apply to the territorial shape. I have considerable

knowledge of the hills, and it would improve the application of the provision to make this change.

The amendment was agreed to.

The question recurred on the adoption of the section as amended.

MR. BROWN of Kanawha. I desire to inquire of the chairman of the committee. It says "each township shall be designated the township of ————." Now, as this is a constitutional provision, unless there is some law provided to give it a name, that is to be the name. That is, to have a corporate name, it ought to be provided either in the Constitution or that the legislature should name it, or that the people should name it—that somebody should name it, which when done, it would be a constitutional provision. Without that it is defective and no name could be given that would be such a name as would entitle a corporation to sue. Because it is a constitutional corporation, not a legislative one to say "township of blank."

MR. VAN WINKLE. The supposition, sir, was that that matter would be arranged in the schedule. I believe the legislature will have general power in reference to these things to pass laws, you know, for the first. If the gentleman thinks it important, an amendment could be introduced at another place giving power either to the county board or to the legislature to supervise the names or change them as desirable. But for the first naming, the first laying off of townships we will have to provide in the schedule. That was the supposition of the committee. I suggested if it was thought desirable that an amendment could be introduced for that in another place.

MR. BROWN of Kanawha. I would move to amend by inserting: "By the name given by the people of the township."

MR. VAN WINKLE. How will the name be formed? If it should be "Scott," for instance, would it be "The Township of Scott, county of so and so?"

MR. BROWN of Kanawha. I withdraw it.

MR. BATTELLE. I do not know that it is a matter of much importance, Mr. President, but the amendment of the gentleman from Kanawha it seems to me should have also included the word "a"—a township.

MR. STEVENSON of Wood. What is the amendment?

MR. PRESIDENT. There is none, sir.

MR. BROWN of Preston. I propose, sir, an amendment to obviate, as I think, the difficulty arising from a combination of square miles and numbers. I propose to insert after the word "divided," striking out the remainder of that sentence, the following: "into not less than two nor more than eight townships, laid off as compactly as possible, having reference to natural boundaries and containing as nearly as possible an equal number of inhabitants."

MR. POMEROY. I would suggest this: to just leave the section to read as it is till you come to "inhabitants," and add: "but no county shall be divided into less than three nor more than eight townships."

MR. BROWN of Preston. Well, sir, so far as boundaries are concerned, natural boundaries must be observed.

The Secretary reported the amendment: "Every county shall be divided into not less than two nor more than eight townships, laid off as compactly as possible, having reference to natural boundaries, and containing as nearly as possible an equal number of inhabitants."

MR. VAN WINKLE. Is the gentleman referring to the first division into townships, or subsequent ones?

MR. BROWN of Preston. The first one.

MR. VAN WINKLE. If it is only the first, it had better be reserved for the schedule. In view of the extent of some of the counties—Randolph, for instance, with the sparse population, that ten had better be the maximum than eight.

MR. BROWN of Preston. I have no objection to increase the maximum.

MR. VAN WINKLE. I think by inserting what the gentleman from Hancock proposes after "inhabitants" providing that the county shall have not less than three nor more than ten, would give it about the thirty miles in the largest ones, which is inserted as a permanent provision; and then we can provide in the schedule, having reference to these permanent provisions, how these townships shall be first laid off. I would suggest to the gentleman, therefore,

to accept the suggestion of the gentleman from Hancock and would vote for its adoption.

MR. BROWN of Preston. I offered this amendment, Mr. President, from the fact after looking at my own county, which is perhaps in territory one of the largest in the State and which was divided under our present constitution to contain eight districts, very compact and probably containing about an equal number of inhabitants.

MR. VAN WINKLE. Will the gentleman permit me to call his attention to part of the 9th section, where this subject is apparently provided for:

"The Board of Supervisors may alter the bounds of a township of their county, or erect new townships therein, with the consent of a majority of the votes of each township interested, assembled in stated township meeting, or a meeting duly called for the purpose; but the area of no township shall be thereby reduced below the limit mentioned in the first section of this article, unless the number of the white population remaining therein shall exceed one thousand."

The area is now stricken out, and there will have to be some alteration there; but there is the place perhaps where the thing should be reached better than in this section.

MR. BROWN of Preston. The districts in my county were laid off and had reference to natural boundaries, water-courses and mountains, as has been remarked by my friend from Kanawha, it is utterly impossible in this country, in a country like ours, to lay off townships or districts in any other way so as to accommodate the various communities and settlements in the counties. I think, sir, there will not perhaps be a county in the whole State that will require more than eight or ten districts. There is an objection, however, to the original division of this territory from the fact that where you have reference to inhabitants or square miles, the expense attending the surveying of the territory will be enormous, sir. To divide the counties as I propose now, to divide them by natural boundaries, they can be laid off with very little survey, and hence the expense of laying them off will be very greatly reduced. I think, sir, the proposition I offered will meet the case and will provide for the counties within the limits of the State, no matter what may be their size.

The hour for recess having arrived, the Convention took a recess till half-past three P. M.

THREE-THIRTY O'CLOCK, P. M.

The Convention on reassembling resumed consideration of the report of the Committee on County Organization, the question being on the amendment offered by Mr. Brown of Preston, which was reported by the Secretary as follows:

"Every county shall be divided into not less than two nor more than eight townships, laid off as compactly as possible having reference to natural boundaries, and containing as nearly as possible an equal number of inhabitants."

MR. BROWN of Preston. I do not propose to occupy the time of the Convention with any remarks on the amendment which I have submitted for its consideration. However, I would remark that I accept as a modification of the amendment a suggestion of my friend from Hancock county, to substitute the word "three" for "two" so that the minimum number of townships in a county shall be three instead of two.

MR. STUART of Doddridge. The chairman of the committee is not in, I believe. I would prefer to lay over a few moments till he comes in. It is courteous, I think.

MR. POMEROY. The chairman of the committee was consulted in regard to these townships. He is coming, however.

Mr. Van Winkle came in and occupied his desk.

THE PRESIDENT. The gentleman from Wood is now in, and the Secretary will please report the amendment.

MR. MAHON. Mr. President, I would suggest the propriety of raising it to ten, and I would merely state my reasons, which are these: our county is divided into five districts. They are large, and we have in each district two precincts, and I think our county is susceptible of being divided into eight townships. I say I think this; and if it is so, then we can have it divided without costing anything for surveying; and if they extend it to ten and leave it to the option of the people of the counties whether they will make it three, five, ten, or whatever they may choose, I would move to amend the amendment so as to make ten the maximum.

MR. DERING. I would prefer myself that the number be not increased to ten. It will avoid the creation of so many offices by

keeping it down to eight, and that is a thing we should all look to. I think, sir, the original proposition of the gentleman is the best with that view.

MR. VAN WINKLE. The remark of the gentleman who has just taken his seat in regard to the number of officers has reminded me of a suggestion made to me about the time we adjourned. Some misconception on that subject has arisen from the fact that there is a considerable misprint in this second section. When the report was first introduced I called the attention of members to it, that the words in the 11th line "for every 600 white inhabitants" should follow the word "supervisor" in the 12th line; so that there is one supervisor for every 600 white inhabitants for each township, but only one clerk and one surveyor. As it stands, it might seem there would be a clerk for every 600 as well as a supervisor.

In reference to the pending amendment, I have only to say that the question of numbers ought to decide it. While I have no doubt that for the great majority of the counties eight would be sufficient, I apprehend it would make very large districts in Kanawha, which is a large county. Sooner or later it will be divided. It would make pretty large districts in Randolph. For the rest of the counties eight might do very well.

MR. LAMB. The voters of each township, according to the plan proposed, "assembled in stated or special township meeting, shall transact all such business relating exclusively to their township as herein or may be by law required or authorized." If this plan is to be carried out, it would be necessary that the townships should not be made too large, and I do not see that there is any objection to the number ten. You fix ten as the maximum. It does not follow that you are to come up to the number unless there is some necessity for it or the convenience of the people requires it. You fix eight as the highest number to which in any case you are to go, and you must necessarily have townships so constructed that it will be extremely inconvenient to assemble the voters to attend to township business. A provision that there should be ten townships in every case would be obviously improper; but the effect is merely to say that in any case the number shall not exceed ten. We have eight magisterial districts in this county, and this is a very small one. I think if you made eight townships the limit, you would find a difficulty in your township meetings.

Mr. Mahon's motion to substitute "ten" for "eight" was adopted.

The amendment, thus amended, was agreed to, and the question recurred on the section as amended.

MR. STEPHENSON of Clay. I would move that the word "possible" be stricken out and "practicable" be inserted in its place.

The motion was agreed to.

MR. VAN WINKLE. It strikes me there should be some limit in another direction, after the amendment made by the gentleman from Preston. I would move to make it read "an equal number of inhabitants as nearly as practicable," or something of that kind, "but not less than four hundred." That will prevent too many townships being made in a county of large territory but small population. If 400 is not considered a proper number here, gentlemen could move to amend it. Those who are most familiar with that class of counties could speak.

The amendment, to add at the end of Mr. Brown's substitute the words "but not less than four hundred," was agreed to.

The section thus amended was then adopted.

The second section was reported by the Secretary as follows:

"2. The voters of each township, assembled in stated or special township meeting, shall transact all such business relating exclusively to their township as herein, or may be by law, required or authorized. They shall annually on the first Thursday of April for every six hundred white inhabitants, elect one supervisor, one clerk of the township, one surveyor of roads for each precinct in their township, one overseer of the poor, and such other township officers as may be directed by law. They shall also biennially elect one justice of the peace; and if the white population of their township exceeds one thousand in number, an additional justice, and as many constables as justices; but the same person shall not be elected constable for more than two consecutive full terms. The supervisor, or in his absence a voter chosen by those present, shall preside at all township meetings and election, and the clerk shall act as clerk thereof."

MR. VAN WINKLE. I have already called the attention of members to the misplaced words in the 11th line which should follow "supervisors" in the 12th line. The word "is" is left out between "as" and "herein" in the 9th line. Perhaps there ought to be a provision there that no township should have less than one and whether that number six hundred would be best is a question for the consideration of the Convention. The first clause may be considered.

MR. STUART of Doddridge. I would suggest to the gentleman that he move to strike out "600" and leave one supervisor to a township.

MR. POMEROY. Will the gentleman give way a moment? I was going to move that as there are four distinct clauses in this section and will lead to numerous amendments, that the first clause, which ends in the tenth line, be adopted.

The motion was agreed to.

MR. POMEROY. Now, I move the adoption of the second clause and that will enable the gentleman from Doddridge to make his amendment.

MR. STUART of Doddridge. Then I move to strike out the words "six hundred white inhabitants," leaving it so that every township will elect one supervisor.

MR. VAN WINKLE. That must necessarily work very unequally. Now, if a township contains—say his town of West Union; I do not know how many inhabitants that township contains —possibly double the number of any other in the county—and has this extent of representation, there ought to be an equality as nearly as we can get it. It is the same question we agitated in reference to the report of the Committee on the Legislative Department. The fault I see in the sentence I was striving to correct is that this says there shall be one for every six hundred white inhabitants; and though the inference would not necessarily flow from it the inference might be drawn that if it had not 600 they would get none.

MR. LAMB. I would ask the attention of the gentleman from Wood to the effect of the amendment adopted on the motion of the gentleman from Preston, that "Every county shall be divided into not less than three nor more than eight townships, laid off as compactly as practicable, having reference to natural boundaries, and containing as nearly as practicable, an equal number of inhabitants." According to that the different townships ought to be laid off so as to be as nearly as possible equal in population. Having adopted that principle, there will be no difficulty in striking out the 600 here, because if this principle is carried out, it would necessarily be a fair representation.

MR. STUART of Doddridge. I have another suggestion in addition to that. Whether they are laid off equally or not, I presume

every township will transact its own business and pay its own officers. In that case if I happen to be in a large population, I do not want but one supervisor—do not want to pay but one.

MR. VAN WINKLE. I would call attention to the beginning of the next section, where it is stated that the supervisors chosen in the townships of each county are to constitute a board to transact the legislative business of the county.

MR. STUART of Doddridge. That is very true; but you propose to have general supervisors. I do not want to have a special class.

MR. POMEROY. I do not think the remarks of the gentleman from Ohio will apply, that a township shall not have less than 400 inhabitants. We have also said that counties shall not be divided into more than ten townships. Suppose the county has 12,000 inhabitants. There are ten townships; of course, there would be more than 400 to the township. If they had 1200 they would be entitled to but one in order to be equal in their representation on this board of supervisors. That would be a legislative body for the county. We have limited the number to ten, and therefore if a county has twelve thousand there would be more than a thousand for each township. The reason we made the limit was in order to meet the case of sparsely settled counties. Therefore, to maintain an equality it would be necessary in populous counties that a township would be justly entitled to two supervisors if you wish to keep up the perfect equality, though I myself might think one would be enough. But when they would come together to lay the county levy, why these people would have the same right to be represented in that board as those in a smaller county.

MR. LAMB. The provision to which I had special reference is that which requires that the townships should be equal as nearly as possible in population. That is the provision which has been adopted. All the townships in any county are to be equal as nearly as possible. Then, of course, giving one supervisor to each the representation will be equal. It is not in reference to four hundred but in reference to the other provision which was incorporated in the amendment of the gentleman from Preston that has been adopted.

MR. HERVEY. It seems to me the amendment of the gentleman from Doddridge relieves this section from all liability to ex-

ception in favor of striking out which the gentleman from Ohio has just remarked. They are required to be almost equal in population, as near as practicable; and I do not think the objection of the gentleman from Hancock applies.

MR. VAN WINKLE. I think the suggestion of the gentleman from Ohio meets the difficulty. That at any rate meets my views; and if that is carried out the townships will be so nearly equal in all probability that the representation will also be equal. And it is not my view nor wish that there should be two supervisors to a township unless it was for the purpose of equalizing with some other township; and in the very remark I made in reply to the gentleman from Doddridge it was that his town or mine might be made to constitute parts of different townships or each a township itself if its population was so great as to require it; might be made into two complete townships or more. I think, therefore, the amendment offered by the gentleman from Doddridge will probably meet the difficulty.

MR. BATTELLE. It does not seem to me it will meet the difficulty, though perhaps I do not understand it. Notwithstanding the amendment already adopted offered by the gentleman from Preston, it seems to me almost certain that some townships will include twice or three times, or four times, the population of others in the same county. I suppose it will be impossible to contract the dimensions of a township in the densely settled places so as to include but 500 or 600 inhabitants the number that seems to be proper to constitute a township in most parts of the State. I am not able to suggest now exactly what the amendment ought to be; but inasmuch as this board of supervisors will be assembled as a legislative body, according to the principle of representation passed on here already in another place, there ought to be some amendment affecting this case. For instance the ratio of the townships of the lowest population and then providing that townships with double that population should be entitled to an additional supervisor. I do not see how else we can arrive at a just principle; for I am satisfied notwithstanding the insertion of the principle of the gentleman from Preston—which is a very valuable one, but not absolute in its terms—and it must be in the nature of the thing that some townships must contain three times, or even four times, the population of other townships in the State. It would be the case in reference to this county, Marshall, Doddridge, Wood, Monongalia, Marion, and a half dozen others.

MR. HERVEY. If my recollection is correct, the language of this proposition is almost identical with the language in our present constitution. That is the principle already adopted and has been carried into practical operation; and the difficulty the gentleman alludes to has not arisen in this case. Suppose Wheeling contains ten or fifteen thousand population, it will be districted according to its population.

MR. BATTELLE. It would be utterly contrary to all precedent in other cases, so far as my observation goes. I never heard of a city of this size, or even of the size of Morgantown, being divided into two or three townships.

MR. SOPER. I beg the attention of the Convention for a short time. I believe, sir, all these restrictions as to number of inhabitants and as to extent are unnecessary in the Constitution. The safer way I think is to leave it to the people in the county, who best know what will be the more convenient for them. The inequality of inhabitants is inevitable. Wherever your county, town, or villages, if you are going to divide your county into townships containing an equal population, as near as may be, the limits of the town where your county buildings are, or where your villages, will necessarily be very small—entirely too small. Now, sir, I have had some experience in relation to these matters. I hope the Convention will not consider it out of place when I say I have represented townships as supervisor in counties where there was such; and I think we will find here that it will be necessary that whenever we have an incorporated city, which is necessarily divided off into wards, that every ward will have the powers of a township and the representation of a township, in the county board of supervisors and will have an officer to represent them by that name, or one of their aldermen will represent them. That will depend very much on the legislature. Now, sir, in the county where I have been in the board of supervisors, some of the townships had five thousand inhabitants but generally averaging between two and three thousand, and I have known them to be less than one thousand. But I never heard any complaint that there was any inequality in the board of supervisors, of any improper legislation or any transactions done there towards the communities of the small towns. I have never known a complaint of the kind; and I never have seen anything in these boards which looked like imposing upon or taking advantage of the small towns. And I

apprehend it will be so in counties in this State, that they can be so fashioned as to get this county organization of townships into proper operation. I think everything will go on in these bodies, carefully, cautiously, harmoniously. Now, the smallest township ever I resided in was five miles by six; and I have known a township in the county I now have reference to which had the smallest number of inhabitants was a township four or five times as large as the one I represented in territory, composed of a large mountainous district, the greater portion of it utterly unfit for cultivation, and there were but few inhabitants in the township and those were along the two streams that were there. The township that I have reference to, that with 1000 inhabitants, was about 12 miles square, and it also had a portion of this mountain in it, and a mountain ran through one portion of it leaving the inhabitants in the town separated by this mountain. And yet when coming to the county seat for the purpose of transacting the township business no little difficulty was experienced owing to the particular manner in which the roads went. Now, we will meet with all these difficulties in this State, and I am satisfied the better way is to leave it to the people in the county to make their own divisions. Take Tyler, which I represent: we have divided that county into four districts under the present law, and in some of them we have two election precincts. That will be obviated under the township system. There will be but one and that will be as near the center as conveniently can be made. I suppose, probably, this Constitution goes into operation in time we shall divide that county into about six townships; and that is all we should require; but in dividing so I am satisfied that there will be an inequality in the number of inhabitants; necessarily so. And probably the townships containing the less number of inhabitants will be much the largest in territory; but yet I apprehend no difficlty can arise from it. And this notion of representation in our townships and counties where the supervisors are going to exercise legislative powers I think is altogether imaginary. Because I suppose these supervisors when they come together will be justifiable in consulting in what way and manner they can work to the best interests and satisfaction, the best interests of the various parts of the county. They will sit down just as a half dozen men here will sit down and each one will represent his section of the county, and they will compare opinions and then fix on what they think is right; and I think you will find it will give satisfaction all around; and it will make very little difference whether it be a small township or a

large one. I should prefer to say nothing at all about limiting these townships in respect to population or extent of territory and leave it as I before said to the townships.

MR. STEVENSON of Wood. I would inquire what shape the question is in?

THE PRESIDENT. The motion is to strike out "600 inhabitants."

The question was put and the motion agreed to.

MR. BATTELLE. I now propose to offer an amendment to come in after the word "one"—in the 12th line the words "or more supervisors according to population," and leaving the precise definition of it in ratio to be determined by the legislature. I offer this amendment not simply in reference to the wants of the cities and towns, though they have their just rights as everybody else, but from what I conceive to be the right of the case generally and the necessity of the case. The amendment of the gentleman from Preston, which I very much approve of, requires that these townships shall be laid off somewhat with reference to natural boundaries; and in the nature of our country here, that will perhaps be indispensable. It will be found by using natural barriers it will necessarily for the sake of the convenience of the people throw one section of the county or territory with a small population with a township right along side of it with perhaps double population. That arises from the formation of the mountains and watercourses and streams of any country. It will be found, I apprehend, convenient to use the rule in reference to the formation of townships as a somewhat flexible rule; and it ought to be so and is wisely provided that it may be so by the amendment of the gentleman from Preston. Now, all I propose is that where townships differ so immensely, lying right alongside each other, that there shall be some indication at least in the Constitution of the right of these people to have double or triple the population to be equitable and equally represented in the county legislature. I move then to insert these words.

MR. DERING. I see this difficulty connected with the proposition of the gentleman from Ohio: if the supervisors are to constitute the county legislature for county purposes, who is to be the judge of how many supervisors each township shall elect? If you leave to the different townships to regulate this matter themselves,

in order to get a preponderance in the county board they may go on and elect in each township an indefinite number. There must be some ratio by which to regulate representation in that county board.

MR. BATTELLE. The very fact that the precise number is left unfixed will make it, of course, a matter for legislative consideration and action. They will devise some rule by which the number shall be carried out.

MR. DERING. Who makes that ratio?

MR. BATTELLE. The legislature of the State.

MR. DERING. Why not fix the ratio at present, while on the section, to avoid the difficulty?

MR. CALDWELL. I feel constrained to make a motion to get rid of a difficulty as to supervisors. I propose, sir, to strike out of this section supervisors entirely, so that in fact we will have in the report no supervisors; but when we come to the other sections, I will propose to substitute in place of the supervisors of this board, to attend to the fiscal and police concerns of the county the justices of the peace themselves. I did not intend, sir, when I first thought about this matter of offices the necessity of striking out in this section the word "supervisors." I thought I would wait until we got to the other sections and then present my proposition. Now, sir, if this Convention will agree that the justices of the peace elected in the several townships of the counties are competent to discharge the duties that is imposed by this report on these supervisors, another set and class of officers, thereby increasing the expense and adding to the number of officers to be elected by the people, then I think they will entertain my proposition with some favor. The justices of the peace, notwithstanding, sir, in the country they are to some extent as a matter of course discharging judicial functions; but, sir, if you constitute them a board and he acted in the capacity and character of a court until added to this board of justices of the peace of the county for the purpose of attending to the police and fiscal concerns of the county, you get rid of this point as raised by the chairman of the committee of blending together the legislative with the judicial powers of each branch. I think, sir, myself, that there is very great objection. In the first place, this is by no means an experiment. At any rate, there is very great objection to the increase in the number of officers. I have been met in the streets of this town by persons

of intelligence telling me we are going on here to uproot every Virginia doctrine and principle; that we propose to require the citizens of the county to elect a string of officers at every election as long as your arm; and all these things are urged, and I think with some force, sir. Now, sir, if you get rid of the supervisors, you get rid of the clerk too I think, and you have then but the justices of the peace. And in order to satisfy the Convention that this would be perhaps as cheap and free from the charge of expense as any other board that probably could be constituted by the report itself, there are to be two less number of justices than supervisors. In our county, for instance, we have 13,000—a justice of the peace for every 1000; giving 13 justices—quite sufficient, I think. In Ohio, there would be twenty instead of thirty-two. If this board in place of supervisors is constituted, I think it would give more satisfaction because of the fact that we have had heretofore some experience in the manner in which the county courts have discharged their duties over the fiscal concerns of the counties. I do not, sir, agree with the gentleman from Wood that there is so much objection to the county courts of Virginia heretofore attending to the legislative and fiscal concerns of the county because my experience of our county is that there it has been done in a legislative way. To be sure, sir, they were required to assemble on a court day. They did not meet in the court room; did not ever have the clerk or myself with them. They met there for their own consultation with others' suggestions as to what should be done in the character that they were required to discharge their duty.

MR. VAN WINKLE. I am obliged to call the gentleman to order. If this thing is to go on, we shall never get on here. There is a rule of this Convention that says a matter once determined shall not afterwards be drawn into debate. Now, this Convention decided, I suppose knowing what they were doing, that the legislative and judicial departments shall be separate and that no officer shall exercise the functions of the two. If this is to remain in the Constitution—and it is there for the present—then any such proposition as the gentleman proposes to make is contradictory to that and of course to debate this matter without a motion for reconsideration or anything of that kind is out of order.

THE PRESIDENT. The portion of the Constitution adopted so far had escaped the recollection of the chair. Being called to his attention I suppose the amendment of the gentleman from Marshall would not be in order.

MR. CALDWELL. I want the President to consider whether the justices of the peace sitting as a board and not as a court would be infringing this fundamental principle established.

MR. VAN WINKLE. I will read the provision.

"4. The legislative, executive and judicial departments of the government shall be separate and distinct. Neither shall exercise the powers properly belonging to either of the others. No person shall be invested with or exercise the powers of more than one of them at the same time."

A man cannot be a supervisor and a justice of the peace at the same time.

MR. CALDWELL. I do not think so.

MR. STUART of Doddridge. We have taken up the report of the Committee on County Organization and we are now maturing this; and I understand after we get through this report and all the reports that we will make them conform as near as possible to each other, and hence it would be regular here to make any motion to mature this report, and after we have got through with it, we can regulate them and be bound to make one conform to the other. I think the motion of the gentleman to strike out supervisor and insert justice of the peace, because in the same section they elect justices of the peace, is certainly in order, unless we are tied down, sir. This comes up now in quite a different position and we may choose after we have adopted this report, fixed to suit ourselves, to change another report to make it conform to this report, and after we have done our work and at last test the question and see whether it is the wish of this body to change it in this form or not. I will not argue the question because I believe the Chair decided it was out of order.

THE PRESIDENT. The Chair would make this remark and call the attention of the gentleman from Wood to it, that it seems to me that there would be more lost by raising the point of order than gained if we find ourselves wrong in anything to go back and consider it before we get a full expression of the house. Consequently, in the opinion of the Chair we would lose much more time than we would gain by that policy. The Chair would certainly be disposed to carry out the rule to the fullest extent; but at the same time, doing so would be very much inclined to hear as far as he could any and all motions that might save time in any way.

MR. POMEROY. Why could not the Chair hear the gentleman who made a motion to strike out "supervisor?"

MR. CALDWELL. I made a motion to strike out "supervisor" simply, not to insert another word; and I will follow up, if that is stricken out, with my further object. I would propose next to strike out the third section entirely, and when we come to the 4th to substitute justices of the peace for supervisors.

THE PRESIDENT. By the motion of the gentleman from Marshall, the sense of the house would be obtained on a simple vote. If we dropped the question here on a point of order and passed back to reconsider the vote by which a provision was adopted, we have to get clear of this question before we could take up the question there. If, however, the question of order is pressed the Chair would sustain the opinion of the gentleman from Wood.

MR. VAN WINKLE. I insist on my call for order. I think it is important not only in this but in every other case. Having solemnly adopted a rule which is to govern in all cases, that rule was adopted on due consideration I have no doubt; and that was that legislative and judicial officers should not in any case be mixed; that no person should exercise the powers of more than one at the same time. I know that the principle was adopted here and settled after due deliberation. Now, sir, if what has been done can be called into question and a proposition can be made to do precisely what the Convention has agreed not to do, we shall never get through with our business. That report is not now in the power of the house to reconsider but it will come up again at the proper time.

MR. STUART of Doddridge. The question has never been discussed before this body and the point never was raised.

MR. VAN WINKLE. The question was discussed before this body, that no person could exercise offices of two characters at the same time. That was debated and passed, sir.

MR. STUART of Doddridge. I understand the section of that report is not to be brought before that body?

MR. VAN WINKLE. I insist on my point of order.

MR. STUART of Doddridge. Then I shall appeal from the decision of the Chair.

MR. BROWN of Kanawha. Whether this question is in effect that a fundamental provision once adopted can or cannot be reconsidered, I am not prepared to say; but I do think whether it is or not we are not precluded from considering it. I cannot think because we have adopted a provision in another report that we cannot debate in this report even that which would negative and contradict the former at all. That provision may be a restraint on the legislature or other authorities on whom it is intended to act, but surely not on us. We will not go back to alter that report, but we are considering another report, and it seems to me we can consider the whole question of this report now under consideration; and if our action now should be found in conflict with the provisions there it will be the duty of the Convention to harmonize that action though it may require that action to govern us instead of this. I imagine the object of the revisory committee is to harmonize conflicting action so that I cannot favor the view of the gentleman from Wood.

MR. SINSEL. If my memory serves me correctly we at the onset passed a rule that on the second reading of these reports it should be in order to strike out and insert. Well, now, when the second reading of that report on Fundamental Provisions is made, we may find it necessary to move to strike out that very section and insert one to harmonize with what we may do here. So it does seem to me the motion of the gentleman from Marshall is in order.

MR. WALKER. I wish to know of the gentleman from Wood whether this Board of Supervisors means in that to be the legislature; whether he intends that that board is to be equal with the legislature that meets in Virginia?

MR. VAN WINKLE. No, sir; it is a legislature for the county. The third section will show you what it is.

MR. STEVENSON of Wood. It seems to me that the matter in reference to this rule is one that would be worth submitting to the Convention to have its decision on.

THE PRESIDENT. That is the opinion of the Chair.

MR. STEVENSON of Wood. If that rule is to be enforced strictly, it would be a very arbitrary and unjust one in some cases; and as the Convention has, I suppose, entire power to change its rules by a vote, I would suggest, sir, that the matter be submitted to the

Convention now to be settled by it so that we will know how the rule will be applied hereafter.

THE PRESIDENT. The decision of the Convention will govern the Chair in its opinion hereafter. The Chair has been free to say that it has some doubts on the subject but has made the decision with a view of giving the Convention the opportunity of settling the question.

MR. VAN WINKLE. The 8th rule is that a question being once determined must stand as the judgment of the house.

MR. STUART of Doddridge. The Chair has decided that the motion of the gentleman from Marshall to strike out the word "supervisor" in line 12 is not in order; from which decision I appeal.

THE PRESIDENT. The gentleman from Marshall not only moves to strike out but expresses his purpose to insert "justice of the peace."

MR. STUART of Doddridge. Yes, sir; but his motion is to strike out.

MR. CALDWELL. I move to strike out the word "supervisors." I followed it up then that the Convention might understand that if the word "supervisors" were stricken out I would move to strike out other portions of the report.

THE PRESIDENT. The gentleman intimated that his purposes was to substitute "justices of the peace."

MR. CALDWELL. Yes, sir.

MR. VAN WINKLE. The rule is that a question once determined it must stand as the judgment of the Convention, and cannot be called in question again. This is a parliamentary law essential to the progress of business in a parliamentary body. The gentleman was going on to debate the propriety of conferring on offices two characters in the same person, which the Convention had decided not to do. The particular rule is Rule 8 of the Rules and Regulations adopted for the government of the proceedings of this Convention:

"8. A question once being determined, must stand as the judgment of the Convention, and shall not again be drawn into debate."

My point of order is just precisely that the Convention having determined that no person should exercise at the same time both legislative and judicial functions that the gentleman by advocating in debate that these two functions be conferred on the same persons violates and this rule is therefore out of order. If the Convention choose to reconsider that decision at any time when it comes up in order, or at any other time, then the gentleman's motion would be in order, and not until then. As it has been suggested that these reports are to come up again and be proceeded with, the gentleman can offer his amendment on the second reading as well as now; which will probably follow the second reading of the report which has been passed upon and in which the section which makes him out of order is found. Now, it will all come up in order, take its regular course and the business of the Convention will go on. But if we decide one thing here—and it cannot be alleged in this case that anybody was taken by surprise, for the whole thing was explained and adopted. With another report that would contradict that precisely, we shall get into inextricable confusion and shall not know what we have done. Both reports are to come up. If the gentleman can succeed in striking out the clause which stands in his way, then he will be at liberty to make and adopt this motion he proposes; otherwise I think not.

MR. STUART of Doddridge. Suppose we go on with this report and it comes up for final revision before ever we take up the report on Fundamental Provisions for final adoption, and we come to this section, and the gentleman makes this motion, then—

MR. VAN WINKLE. Any gentleman can call it up.

MR. STUART of Doddridge. The gentleman is certainly in error. Now, sir, it might be possibly right in the Chair to decide that the argument of the gentleman from Marshall was not in order; but his motion was undoubtedly in order.

MR. VAN WINKLE. I find another fault with his motion: it is debating a proposition that is settled. He may make what motion he pleases, and the house may dispose of it as it pleases.

MR. STUART of Doddridge. I understand then that the motion to strike out "supervisor" is in order?

MR. VAN WINKLE. Yes, sir.

MR. STUART of Doddridge. The gentleman agrees that motion can be entertained? I suppose the Chair will not contradict that?

THE PRESIDENT. The Chair has no doubts about the motion being in order if it had not been accompanied by the declaration that he was to fill the blank with "justices of the peace." Still, the Chair would not have objected to the motion on that account thinking it likely it was the gentleman's way of obtaining the sense of the Convention on that particular subject. If the gentleman's purpose is just to strike out without filling, the Chair would entertain it.

MR. HERVEY. I hope the question will be decided by this Convention now that it is up. I have no doubt there is a misapprehension on the minds of a good many members in regard to the binding force of certain sections or so much of the action of this Convention as has passed. Now, sir, it strikes me that no part of the doings of this body as yet can be taken as a rule for this body. One of the rules adopted by us declares that reports may be taken up section by section and adopted; but that those votes shall not be final. Now, sir, does that mean, are we bound by a proposition which in itself is not a finality, which we have a right ourselves to reconsider? It is true, sir, that no one of those reports has been passed by the Convention finally disposed of. If it had been we would be bound by it; but until a report is adopted finally by the Convention it does seem to me that no part of it, according to our rule— the last one we adopted—can control it.

MR. DILLE. Mr. President, I would like to inquire what is the question or matter before the Convention?

MR. VAN WINKLE. Nothing but for the Chair to decide the point of order.

MR. DILLE. I understand that question is not debatable.

THE PRESIDENT. The Chair will admit the motion to strike out.

MR. VAN WINKLE. That is not the ground on which the motion is put. It is, as stated by the gentleman from Brooke, whether it is right to debate here, call in question, what has already been determined. The gentleman can move to strike out "supervisor." I know nothing to prevent him. It was the debate on a question already determined that I protest against.

THE CHAIR. The gentleman from Marshall will proceed.

MR. CALDWELL. After consultation with several members of the Convention, I have come to the conclusion that we can dispense with these supervisors. Now, sir, it is a little singular that I shall be restricted in assigning the reason why we can dispense with them. We must have some sort of supervisory board and it is singular—

MR. BROWN of Kanawha. I desire the gentleman shall have the opportunity to see the question settled. The gentleman can argue the question as he proposed to do and the gentleman from Wood can raise point of order.

MR. VAN WINKLE. The Chair will decide it. Will the gentleman let the Chair decide the point?

MR. CALDWELL. I thought the Chair had decided it.

THE PRESIDENT. Really, I would like to see the whole question decided if it would embrace the whole subject fully. If it is left to the Chair, the Chair is of opinion that the motion to strike out is in order, and whatever is necessary and proper to state as reasons for striking it out will be allowed; but latitude embracing arguments outside of the necessity will not be allowed.

MR. CALDWELL. In order to relieve the apparent difficulty, I will confine myself to these simple remarks that I have made and the further remark that I have done this with the expectation if I succeeded of satisfying the Convention that something else can be substituted for the government of the counties. The Convention will see that I am making no misstatement of what my object is. It will be for them to decide whether there is propriety in the motion to strike out these words; and in order to relieve the Convention of the difficulty and any argument, I forbear to say anything on the subject.

MR. POMEROY. I hope if there is any person a little out of humor, we will all get back to our common state in a short time now and we will go on pleasantly.

MR. VAN WINKLE. I can assure the gentleman and the Convention that my feelings have not been ruffled. I was very anxious to have this question settled, but I cannot get a decision from the Chair. I waive it therefore entirely.

THE PRESIDENT. In order to satisfy the gentleman from Wood, the Chair will allow the gentleman from Marshall to debate the whole subject.

MR. DERING. I was just going to make that motion.

MR. VAN WINKLE. I withdraw it, sir. We cannot get anything settled in this way.

MR. CALDWELL. I rise with some embarrassment now to attempt even to follow up what I designed saying in the first place. I think, sir, this Convention and the people of this commonwealth can repose confidence enough in justices of the peace whom they have elected to transact all the fiscal concerns of their county as well as any other that we happen to elect. Justices, sir, are selected generally from the most intelligent and most upright men of the community; and I think, sir, when these justices are elected in any county from this intelligent community that they should be entrusted with the discharge of the duties of this Board of Supervisors. Well, sir, why desire to go any further in the selection ascertaining what other tribunals shall discharge the duties of the several counties together? Now, sir, as I suggested before, it would only be adding to the expense and giving to the voters the trouble of electing additional officers. The fewer officers we elect the less trouble to the voters and the less expense to the people of the county. That is certain. I do not think there can be much objection to it when these justices are sitting as a board of supervisors and not as a court, not on a court day, not to be interfered with at all by attorneys or other such officers as are in the habit of attending courts on court days; that no objection to their being as it were at all a portion of the judiciary can exist notwithstanding in the matter of discharging the duties of justices of the peace they may, and do of course, constitute a judiciary.

But, sir, without attempting to say anything further, I will leave the matter to the Convention.

MR. SOPER. I ask to say a few things to the Convention on this motion, sir. The first question I want to call the attention of gentlemen to is this: what will be the duties of this officer which the report designates as a supervisor? Suppose, sir, that he is now elected, the first thing will be to go before a magistrate and take the oath of office and return that to the town clerk who will file it. Whether the town clerk or the justice will receive any fee for administering or filing that oath, I take that for granted, because it has been so wherever I have had experience in these matters. That is a matter for the legislature to say. The next thing he will do, sir, if there are any officers in his town who

are required to give surety, they will come before the supervisor, and what instrument he will require, whether a bond or an undertaking will depend on what the legislature may say. He will pass on the sufficiency of the surety and he will give his certificate to that effect. For this, sir, he will receive no compensation. The next thing he will do will be to receive from the town clerk such certificates of what shall have been voted by the people in relation to charges upon the township for instance. Now, if there is a bridge to be repaired within the township—small bridges, I apprehend, will be repaired at the expense of the townships—large bridges, in the discretion of the supervisors of the county will be made a county charge perhaps, but in most instances the small bridges in the township will be kept in repair at the expense of the township—it will be left to a vote of the people at the town meeting. If the people for the purpose of making a bridge or making any other improvement in the town—a town house, if you please, or anything else they may deem necessary for the public benefit that they are willing to tax themselves for and will vote for in the township—an amount of money to be levied on the taxable inhabitants of the town to raise money for that specific purpose. If any vote of that kind will be taken the town clerk will give a certificate of that to the supervisor who will retain that until he meets with the general board. The next thing he will do after he receives the certificates from the town clerk he will receive from the overseer of the poor—that is, if your poor are to be made a town charge —if they are not to be made township charges but county charges then the board of supervisors will receive the certificates of the amount necessary and in order to bear the expenses of the board; but if a township charge the supervisor will receive the necessary evidence, generally in the shape of a certificate setting forth in detail the objects particularly for which it is wanted to be raised at the instance of the overseer of the poor and will hold it until he meets with the board of supervisors. Next, sir, will be the proceeding of your officer at your annual election. He will do very much what your conductor of elections does now-a-days. For that service he will receive this per diem allowance. I do not know of any other service in the township as a supervisor for which he will receive any compensation unless it be that of presiding at elections.

Well, now, if you carry out your judiciary system that you are now adopting, you will find it will become an absolute necessity that your justices of the peace should have jurisdiction over all

light criminal offenses committed within your township, such as unlawful trespass, breach of the peace, threatening to injure property or person, cases of assault and battery. I shall insist when it becomes necessary here that justices of the peace have jurisdiction to try an assault and battery under certain restrictions. All fines that will be received by the justices of the peace will be paid over into the county treasury or your sheriff, who may be designated as the officer to receive it; and if there are any expenses incurred—if for instance the charge should be dismissed and any cost should be incurred by the constable or justice of the peace for it, a justice of the peace would make a bill for all these items of expense. That bill would be turned over to the supervisor to be passed on by the board when they come together.

Well, now, to carry out this system thoroughly of township organization you would want assessors one or more in each of your towns. What will be the duty of that assessor? I should if I had my own wish about it in every township that is six miles in length want more than one assessor. I have known usually three in a town. Their compensation has generally been $1.35 daily. Here I suppose it would be from 75 cents to a dollar. His duty is to go and call upon every individual in his township. He enters their names, the amount of personal property, of real estate, putting a valuation on both; and they have the power when they get an individual who is not willing to disclose to administer an oath to him and of making him answer such questions as will make him disclose truly what he is worth and in what his wealth consists, so as to get at all property taxable. These assessors will come together and look over to see if any one in the town has been omitted and then they will get among themselves and put what is called an equalization on the property. Well, I suppose this would take them, where there is more than one, each one from one to two weeks to perform that duty. When that is done, these assessment rolls are directed to the supervisor and he takes them with him when the board meets. That I believe will constitute what duties the supervisor will have to perform in the township and you will perceive at no cost to any person except the inhabitant of the town and then only for having presided at those elections.

Now, the Board of Supervisors meet. What is the first thing it does, or the most important duty? Gentlemen, let me tell you that board will have to perform the one that will require the most consideration, the best judgment is in getting the assessment rolls of the assessors in the different townships and equalizing the

value of property throughout the whole county. Now, so far as it relates to the expenses of the township officers that is a charge on the township and the valuation has nothing to do with it; but when you come to look at charges on your county, to be borne by the whole county, then it becomes necessary that the property on which the taxation is to be laid shall be equally valued, that the valuation shall be equalized as near as possible; and when that is done there is no further difficulty, because the amount is a mere matter of calculation, to make out the amounts to be collected from each town. That will depend on the amount to be raised on the value of the property. It will include the portion chargeable on the county for state purposes, the moneys charged on the county for county purposes, the expense chargeable on the township. And when these assessment rolls have been prepared, why then these taxes will be collected according as the legislature may direct. If by a collector in the township, that will be an additional law; if not, probably by the sheriff of the county.

Now, what further duties will the supervisor have to perform? I mean now in their body as a Board of Supervisors. Why, if there is a bridge in your county which it would be unjust to put the whole expense of on one township—that will depend on who are to be benefited by it—these supervisors will determine whether it is to go on one township or on the whole county. They will also look at the accounts of your justices of the peace for services in criminal cases and the accounts of your constables and audit and regulate them and tax them according to the laws of your legislature whatever that may be, being extremely careful that neither the justices of the peace nor the constables include in their claim improper items, nor—as has been discovered in the case of municipal constables—that they do not bring in once or twice the same kind of charges. Here I will say that when a township understands its interests truly, they will select one of their best and safest men for the transaction of business. Now just so if there comes up a question about a ferry, about a mill, as well as a bridge—if there comes up a question about a road in which one or more towns are concerned, and every other local question applicable to the county or townships where the charges for the purpose of it are to be on the county. Well, now, if your legislature should pass any law directing that a certain amount for any specific purpose shall be raised in your county—for instance, if your supervisors should refuse to lay money for the erection of a bridge—I do not know of anything to prevent the

people of the county going to the legislature and getting an act passed to require the amount of money to be raised on that county and directing the board of supervisors to levy and collect it in their annual tax. I see no objection to anything of that kind. The legislature would not interfere in a matter of this kind unless they had the most reliable evidence that application had been made to the Board of Supervisors and they had mistakenly refused to do it. Now, I believe that embraces about all.

Now, we come to this question of enormous expense. Why, if you could look at this new system and then compare it with your present operations—with your great number of justices receiving three dollars a day, you will find it much more satisfactory. As for the expense, I suppose if there was but one annual meeting of the board, as the report provides for four—if it was all done by one annual meeting it could be done in the course of six or eight days. They generally used to occupy a week and a half. They meet in the morning at 8:00 o'clock; they meet again after dinner, and an hour after tea. It is generally in the fall when the days are long, and there they stay and transact their business and quit, because they do not receive a sufficient stipend to pay to make it any object to remain away from home. Their business is generally at home. They do this public business because it is doing a public good. It is not that they are desirous of getting the office, that they want the influence or emoluments of it. But where I have noticed, they have received two dollars a day each in a city or large town, when you are away from home and where you have to pay fifty cents for a meal and then a pretty large sum for your horse-keeping, you will find two dollars a day just about pays your expenses. In this State I suppose they would receive from a dollar to a dollar and a half a day. So that you will find that at the end of the year the supervisor might probably tax your county twenty or twenty-five dollars to transact all your business. Now, that would be all the expense of it.

The office ought not to be filled by the justices of the peace for two reasons. In the first place, if you are going to extend the jurisdiction of your justices of the peace to enable them to try all civil cases where the amount involved did not exceed $50 to $100, if you give them the power of disposing of criminal cases that may arise—small misdemeanors—why you will find that these justices will be almost constantly employed in his own township, and if you give them anything like the fees they ought to have for office business the position will be sought after as a source of

profit; whereas, the office of supervisor will not. There it will be a matter of patriotism more than anything else; but the justices of the peace will be different. He will be wanting to remain at home and will be there waiting every day for applications to be engaged in the trying of causes for which he will receive a constant compensation which arise in many of your townships and in your cities will be an office that will be desirable. There is another reason. This magistrate will have more or less court claims, more claims against the county and town than any individual in it. To put these magistrates in a position where they would have to pass on their own claims, I never would consent to anything of the kind. You have either got to say your magistrates shall receive no compensation for their services that they do for the public at large, or otherwise you ought to say they ought not to be the men who are to tax our accounts and liquidate them and levy them on the people. But in comes your supervisor, a man that stands perfectly aloof from them, who is above anything like fear of influence; there they, the supervisors of all the towns are out, and they look at those bills and scrutinize them and audit them, and when they audit them, they are allowed. For that reason I think justices of the peace never ought to be put into the places where that report contemplates putting the supervisor. All of you will at once the necessity see there must be some individuals whom the report designates as a supervisor in the town, who is to be first officer in the town, who is to compose this part of the county board who take the money of all your taxes. There must be some individual of this kind; and ought it not to be a person such as I have described to fill this office in preference to a justice of the peace or any other officer of the county, liable to have claims to be passed on by that board?

I have briefly given you what I suppose to be the principal duties of the supervisor, and I am very decidedly of opinion that he is named rightfully there. These duties that I have suggested will be probably the principal duties he will have to discharge, bearing in mind at all times, gentlemen, that they will only carry out such authority and laws as the legislature will give them. I have heard a great deal said here and gentlemen have been frightened considerably at the idea of bringing here a large batch of officers of the government. All of this is imaginary. How many officers are contained in this report in your district now? You have got your four justices and constables, and overseer of the poor. You will have no more surveyors of highways than you have now. Four

justices, an overseer and constable, make six. How many do you make under this law? Here is your supervisor, your town clerk, overseer of the poor, justice of the peace and constable. This idea of the enormous number of officers—why, gentlemen have not looked at this thing. They are counting them up by the hundreds. Why, they do not exist, gentlemen. Suppose they did exist? Who are they? They are your neighbors in the township. And let me say to you, gentlemen, I now speak from mature judgment. I have no feeling in this matter. If you want to make the people in your township active; if you want to raise up your young men and bring out the talent there is among them; you just adopt this township system, and instead of having the officers you have got there, instead of doubling them the number will not be over two-thirds as I could show you; and the effect of the change will be to set almost every man in the town to reading and understanding the duties and trying to become competent to fill these offices. They will all be reading; they will want to see the laws and newspapers and they will want to become competent to discharge these duties. And all this will be done in the best of good humor and they will become capable of understanding and explaining all these matters; and wherever you find real native talent it will be brought out in time and it will shine and cut a figure in the county; and this will be one of the best modes of bringing it out.

I have nothing to say against the county court. I lived in Virginia before they were elected, and I have lived in Virginia since. Many of them are very competent, respectable men in the performance of their duties. We have got in our county four districts and sixteen justices, and they will meet together on a court day; part will be occupied by the court and a committee or two will be engaged and they will sit from one to three days, and the whole business will be transacted by the county clerk, the sheriff and two or three of the justices of the peace, and it will be just taking the figures of whatever those gentlemen please to put down; and when your justice of the peace comes home and you ask him what is the amount of your taxes and what are they all for he cannot tell you for his life what composes the items. Not so with your supervisors. He will be able to tell you every item for which you are called on to pay taxes. As to the competency, I do not want to name names but I have known justices of the peace that could scarcely write their names and never pretend to follow up a precipe or enter a judgment on the docket. I have known them to be made a—I would not say cats-paw; that is perhaps a low

expression—but they relied on the constable to say and do everything as that constable might direct; and I have known constables of that description that would not only influence justices of the peace in this way but were perfect tyrants in the community. The gross iniquities I have seen practiced on a small scale in Virginia through the utter incapacity of some of these magistrates and their constables, more particularly before the magistrates were elected by the people. As a general thing the magistrates of the present day are as competent men as there are in the county. The question might arise, how far would I extend, if I had my desire on this occasion, the number of officers? Why, I would leave it to the people of the towns to say whether they would have one or two overseers; I would leave it to the people to say whether they would have one, two or three. I would have also an officer whom I would designate as commissioner of highways. What would be his duty? Why, if there was a dozen reputable free holders who wanted to have a new road made or an alteration made in one already made, I would have these gentlemen send a respectful petition to the commissioner of highways wishing them to designate a day to go on the premises and have them say whether they would allow a road or make an alteration in the road. I would have them go on the ground and there refuse or grant the application. I would allow to these commissioners acting in the dispute 75 cents a day for their services in order to defray their expenses when away from home; and I would set all this road matter right in the township. I would give the parties who considered themselves aggrieved a right of appealing from the determination of the commissioners of highways to the board of supervisors, that the board to designate from probably an adjoining township two or three individuals to arbitrate the matter. Well, now, what is the present system here? Here is the court sitting and here are the people crowding in from all parts of the country, but nothing is done, and after a while the next court comes around: here has been some little error, and here will come a lawyer and they will want to have the whole thing reconsidered. Then you have got to sit down and call the aid of your sheriff to summon in the man on whose decision it was done; and there it will go court after court and the longer it goes the worse it gets, at an expense of three dollars a day for your magistrates and the expenses of your sheriff and the expenses of the individuals you are summoning and taking from home to attend to these things. If these commissioners of highways could go there and sit a day in the neighborhood, in a friendly

manner, on the ground, I would have it done; and if after all there was a grievance, I would have it go up to the Board of Supervisors, and they could either decide it or appoint individuals in the same neighborhood to arbitrate it. I would then, gentlemen, have one, two or three highway commissioners, and they would receive 75 cents a day, not to be put on your county or the State, but upon the people themselves right in their neighborhood. That would relieve your county courts of nearly one-half of their business, dispense with the monthly terms, because the courts would have no business at all then only road business.

I am explaining this system and I am ready and willing in the course of debates on this subject to answer any question that may arise in the minds of gentlemen, I have only touched briefly on it to call the attention of gentlemen to the operation of the system as it will be. I suppose properly speaking I ought merely to have confined myself to the question of striking out this office, the supervisor. I am satisfied it would be an error for us at this stage of the proceeding to undertake to strike out that officer. I would retain him until I went through the whole report, and when it comes up on the second reading and gentlemen have had proper reflection on this subject and made up their minds, then I would hold the thing open for such amendments as the Convention in its wisdom might see fit to make. At present I am decidedly opposed to striking out the word "supervisor."

MR. PARKER. I am unable to see how anything is to be saved by the motion of the gentleman from Marshall. I go as far as any other gentleman for reasonable economy in all things. We have in Cabell, if I recollect right, six magisterial districts and twenty-four magistrates. The gentleman from Tyler, which is a smaller county, says that county has sixteen. As I understand where we stand now, with this report, there cannot be over ten supervisors nor under three. Cabell, in that proportion, would have about six supervisors; not over seven, certainly. She would have six or seven magistrates, making twelve or fourteen under different names—six or seven under one, six or seven under the old name of magistrates would perform all that is now performed by the twenty-four magistrates except that portion of it which the two additional terms of the Superior Court which is contemplated and which I hope will pass, will take care of. Well, there certainly would be a great reduction of numbers—very great. Now, if six or seven magistrates undertake to do the whole of that business, to say

nothing now of this incompatibility—of this direct conflict with that great fundamental principle which we have here laid down unanimously—going back to the same difficulty which existed in the old county court—to say nothing of that, it must be to say that these six or seven magistrates can do all the business that must necessarily devolve on justices of the peace everywhere, and then take upon themselves the whole business of the county, legislative and fiscal. Why it seems to me the most extraordinary thing in the world. The great mass of the business that now rests upon the county court is to devolve on these six or seven magistrates, and they are to assume the double offices and functions of supervisors and magistrates. That does not combine the incompatibility beginning with the Federal Constitution and in every state constitution down to ours as far as we have got. I can see no reason on the score of economy; and if there was, how great soever it might be, I would not violate that great principle. I shall vote against the motion.

MR. STEVENSON of Wood. I feel satisfied that the Convention is ready to vote on this question, and if there is no member anxious to speak, I hope the vote will be taken now.

The question was stated as being on the substitute of Mr. Caldwell for Mr. Battelle's motion to add the words "one or more supervisors according to population."

The vote was taken on Mr. Caldwell's motion to strike out "supervisor," and it was rejected, the question recurring on the motion of Mr. Battelle.

MR. WARDER. I have an amendment I propose to offer in relation to surveyors of roads. I propose to ask for the same amendment that was proposed by the gentleman from Ohio, to insert "one or more" in the 12th line—"one or more surveyors of roads."

MR. VAN WINKLE. It says one surveyor for each precinct.

MR. WARDER. I will withdraw it. I did not understand it.

MR. SOPER. I was not aware of the amendment offered by the gentleman from Ohio. I think one supervisor in a township is abundantly sufficient; no necessity of having two unless you are going to have a supervisor for so many inhabitants; and in the working of this system I have never seen any necessity for it.

Where I have had any experience in this matter there was great inequality so far as related to the number of the inhabitants in a town. One township would contain a great many more than another. One ward in a city will; but yet in this county board, having one supervisor from each town and from every ward in a city also I have generally seen, and I suppose it will be so here, a determination on the part of all these men to do justice and equity all around. I never saw anything like taking advantage. I do not see how it could be. Well, now, gentlemen will see at once that if we start on this inhibition the inequality would be very glaring, and I believe your Board of Supervisors, appointed one for each town is abundantly large for all purposes in regard to which they are called on to act; and if you get ten in your county, you will have a very respectable body. From three to ten can do the whole business, and I think we had better retain the one supervisor in each town.

MR. PARKER. Will the Secretary report it?

THE SECRETARY. "One or more supervisors according to population."

The vote was taken and the amendment rejected.

MR. STUART of Doddridge. I move to amend by striking out, in the 10th and 11th lines the words "First Thursday of April" and inserting the words "Fourth Thursday of May." My object is not to have two general elections within one month of each other.

MR. VAN WINKLE. This election is held in the township; is the annual township election, and cannot be held on the same day as the other, it is not possible, you cannot hold the township election and the other election on the same day.

MR. STUART of Doddridge. We will hear that objection after a while—with all respect. My reason for offering this is to make one election answer. Now here is an election on the first Thursday of April. It is true it is a township election. All the people are called upon and come out to vote on that day because their townships hold their elections on the same day in one month. After that time there will be the general annual election and the people will be tired, and, as I have remarked heretofore, under our present constitution they are really tired of elections and have become worn out with them; and if it is possible to make this provision to conform in that respect and we can have these elections at the

same time of our general election, it would be a great convenience and saving to the people. It may be that it cannot be done; but if it can be done, sir, I favor the proposition. Our general elections are all held in these townships, which will constitute the various election precincts; and why not make one election answer all these purposes?

MR. SOPER. Mr. President, I cannot see the force of the argument of my friend from Doddridge, when he says that elections here are burthensome under this new proposed plan. Why, sir, they are not burthensome. True you have an annual election for the election of your town officers and to transact your town business for the year. The people will be called out but one day for that purpose, but suppose there is a vacancy, suppose your constable vacates his office, or your overseer of the poor. Your legislature will provide that your justices, your supervisor and your town clerk, one or two of them, will get together and fill the vacancy until the next year. How is it now, sir? We have had in Tyler some one half dozen elections within a year, and some of them for a single magistrate, some for a constable; and whenever a magistrate resigns, the court orders an election. The election within the last year, in consequence of the conventions and what not have been something of a burden on the people; but I have never heard them complain about it. I believe they are pleased to get out and have a day of recreation, many of them. It doesn't cost more than their dinner, unless they want to stimulate a little. Certainly I should not think gravely that the expense would be anything. It is true under your present system you have your conductor of elections that gets his pay. You have then three or four other individuals who are commissioners, but get no pay. You have then, from two to six or eight clerks that get pay. Well, now, when you once get this system in operation you dispense with all your clerks; you only want one or two clerks. The clerk of the town is the clerk of the town meeting and at the general election I have known the clerk of the town, the supervisor and two or three assessors to be the inspectors, and the justices and the town clerk would be the inspectors at the town meeting. Here in Virginia the way I have seen it I have seen from two to six clerks; they would have two clerks on almost every officer they were to vote for; which I conceive a very unnecessary expense; and where they have as many elections as they have been in the habit of having under the present system, it has been a considerable item of expense. But under the proposed system, the expenses will not rise to one-quarter.

Now, as to the time of holding this town meeting, if it could be done, it would be adviseable to have it considerably apart from the annual election; and if it is going to be the wisdom of this Convention here to have your elections on the fourth Thursday of May—if that is such a fortunate and happy day that it cannot be changed, when your legislature does not meet for some six or eight months afterwards—why, then, it might be well to consider whether or no you would not have the election a little earlier than April. I have known that to be held in some places in February; some in March. I never knew any of them later than the first Tuesday in April. But that has been generally where the election has been held six months or more afterwards in the fall. Now, it may be well to consider the suggestion of the gentleman from Doddridge so far as to prevent the township election and the annual from coming near to each other. But I should prefer seeing the election for state officers in the fall of the year. Township business you can have anytime before the farmers commence their work. March would be a very good month. They have but a little distance to travel, they come to the most populous part of the township, where there is a store, public house or something of this kind where the business is generally transacted. I think for the present we had better retain the first Thursday in April, until we see some gentleman suggest the propriety of holding the annual election. I mean for state officers. If this should be done, then this is right. If not, then when we come to the second examination of the report we could probably fix upon a proper and suitable day. In making the two elections as widely apart as we could consistently with the business of the people of the towns. But for the present, I think I should leave it where it is.

MR. POMEROY. I think a word or two is all that is necessary on this subject. I know of no state in the entire confederacy where they hold these elections on the same day. There is great propriety in keeping them separate. The township concerns immediately the people of the township, and they wish to be in that exclusively on that day attending to the interests of the township. This election ought not to be mixed with the election of the county and state officers at all; and if my friend from Doddridge would only think of that argument he has already used of the great importance to candidates seeing their friends, he would think this day of April would be a proper time to see his friends. As to the expense, there is no expense to this thing under this plan we propose

to adopt worth mentioning. The supervisor is to preside, the clerk to take down the names of the voters. He would gain a small compensation—perhaps a dollar—for his services. It ought to be entirely separate from these political influences which are brought to bear at county and state elections. I hope the motion of the gentleman from Doddridge will not prevail.

MR. PARKER. It seems to me peculiarly appropriate that they should be chosen early in the spring. They are annual officers. They have peculiar duties and work that they have to perform, as, for instance, the surveyor. He has the year before him. Should he commence his work in the spring, or should he wait until midsummer? There is a special propriety in electing these officers early in the spring—that is, as early certainly as the first Thursday of April; earlier I should rather say than later; so they could enter on their duties for the year.

MR. VAN WINKLE. I was under the impression when I spoke a few minutes ago that this election must take place at the town meeting. That is not, however, so by the report. It might take place, therefore, so far as it is concerned on the day of the annual election; but I think there are reasons for separating them, and some that have been sanctioned in the case of the election of judges —and that is to separate them as far as possible from the party politics of the day. The different day on which these elections should be held would also answer on the day on which judges could be elected; and in that way we would have the same number of elections we have now in the year, when judges are to be elected, and it would separate it, as I said, from the political elections where party feeling is excited as the thing at present stands and all officers are to be elected by party.

In some states it is usual to elect township officers by ballot, and in some by dividing at the meeting. I think to elect them by ballot is preferable. We are not going to have as long elections, I trust, as we had under the other system, because, no matter how many candidates they can all be put on one ballot and taken in one day. I would for the reason I have stated, prefer to retain a different day. When this was fixed by the committee it was understood that the state election would be fixed in the Fall and was so reported, I think, by the legislative committee. These are put at a different time of the year.

MR. BROWN of Kanawha. One remark of the gentleman from Wood. It is in allusion to another topic but connected with this, and that is the freedom from all difficulty in voting by ballot. He tells us they will all be put on the same ballot. Now, I confess I am not aware, I do not know exactly what is meant by the word "ballot" in that sense. Do you have these eight or ten or a dozen officers to vote for on a given day—county officers, magistrates, supervisors, clerks, constables, overseers of the poor, surveyors of roads, and I do not know how many others? Well, I come up as an individual to vote and here a gentleman will hand me a ballot with a list of names. Well, now, I look over that and I find I am willing to vote for some on the list but not all. A gentleman hands me a ballot on the other side; and going over it I find I am willing to vote for some on that list and not for others on it. I have to cut the ticket in two; and whether there are as many ballot-boxes as there are men to be voted for I do not know. Now, I suppose the only ballot that has occurred to my mind would be the individual's name for whom you vote and the voters name upon it. And if there were five hundred officers there would have to be just as many ballots. Wherever the system is in effect if you have to put all of one side on one ticket and these have to vote the whole ticket through, it would render it much more objectionable than present methods.

MR. POMEROY. You are voting, for example, for supervisors and overseers of the poor. The man that is voting for supervisor just doubles his ballot so that the word "supervisor" is out and the name of the candidate is in. There are large boxes and a number of small boxes all labelled. The officer who receives the ballots puts those of supervisor in one box, those for overseer of the poor in another, and so on. When the election is over the boxes are opened and the ballots counted; the clerk takes down the names of the voters as they present their ballots, the tickets are cut apart; the gentleman is correct in that.

MR. VAN WINKLE. Where I have seen it—and I have seen it in more than one state—all the names are written or printed, as you please; "For Supervisor" such a person and such another; "For Clerk," so and so; and so on for all the officers to be chosen, setting forth the names of the candidates for each—all on one paper, folded up and put into one box. They had separate ballots for state, congressional and perhaps county and township officers. But all officers to be elected at one time can be put on the same

piece of paper. I was a little surprised at the gentleman's idea of a man writing his name on the ballot. Of course this would disclose his vote to the election officers who examined the ballot and would defeat the object of the secret ballot. That is not done in any case.

MR. STEVENSON of Wood. There was one matter my friend here from New York and the state of Hancock forgot, to mention that the gentleman from Kanawha inquired about, the difficulty that he had in regard to the names on two or three different tickets, and his wish to vote for some parties upon probably two or three of these different tickets. I would just state what I have seen adopted in that case is to take one of the tickets and scratch out some of the names on it that you do not want to vote for and write in another name opposite the office designated until you get your ticket full. Supposing there were five persons running for legislature, and you wished to vote for two upon some other ticket. You write these two names on one of the tickets and scratch out the other names on that ticket. Where the system of voting by ballot is in operation, the matter is simple and accurate. There can be no difficulty in a man voting for all the officers he wishes to vote for and for any candidate of his choice, so that it shall not be known how he did vote in any case.

MR. BROWN of Kanawha. It seems that the reason urged by the gentleman from Wood against the placing of these elections on one day is not conclusive. The more I see of general and special elections the more I am satisfied that the only thorough, full, fair and satisfactory expression of the public sentiment is had when all the people are at the polls, and that that election is the best which secures that object, and that a general election which elects every officer in the commonwealth for that year on the same day is the best because you will have the people all there; that every other election that is chosen on some other day that does not excite general interests or divides the sentiment of the community is a real evil. And I believe further from observation of the community in numbers so great as to render it a public testimony, that the frequency of our elections is a crying evil as is the number of officers that are constantly annoying our people in elections. I am satisfied we should fix the general stated elections annually and at that election should choose every officer that is to be voted for in the year. And then everybody will know it and be there. I shall vote for the amendment of the gentleman from Doddridge with a good

deal of pleasure, for I believe it is the true principle and ought to be carried out in this case.

MR. HERVEY. I hope the motion to strike out will not prevail. One officer is surveyor of roads. He cannot discharge the duties for the current year if elected on the fourth Thursday of May. The day placed here is the first Thursday of April. Every man who has had any experience in that line knows that the surveyor of roads should let early in the season the work that is to be done, so it may be done before the work of the farmer comes on, who must have proper time to prepare for his harvest and to cut his grass. If a surveyor is elected the last of May he cannot discharge the duties of his office that year, very well.

MR. STUART of Doddridge. The gentleman from Brooke seems to think these elections ought to be held on the first Thursday of April from the fact it would give the overseers of the road time to work the roads. Well, I think, too, it is the right season to work, but I want them to work the roads at the time they ought to work them, and there is nothing in the world to keep them from doing so. You can take the thousand persons that are to come out on the first Thursday of April and have them, instead of voting on that day put to work on the roads at the very time that work ought to be done and at the time they can do it instead of going to the election.

The gentleman from Tyler seems to think my reason assigned in relation to the expenses of the election are not valid, because only two clerks are employed. That is not the expense of the election at all. It is when the great mass of people come out and spend a whole day at the election. For instance, a thousand voters came out to vote. If not they cannot have any voice in who shall constitute these officers. If they come out, there is a thousand days lost, it is worth a thousand dollars.

MR. SOPER. How many days do your people attend the county court?

MR. STUART of Doddridge. These men who have business before county courts will still have business and they will go wherever their business calls them. They will pay the expense. But I do not want you to call on me to go out and work for overseer of the road when I would go to the general election. I do not want this question about work on the roads to be a test question as to the day the election shall be. The general elections have been set for the

fourth of October. I would have made the same motion. Have these elections on the day of your general elections; and whenever you fix that time and see cause to change it let it all be changed alike. Because if you make them in October, I would make these the same day. Now, what is to be gained by keeping these elections separate and apart? Am I to be influenced, or suppose people are to be influenced by party feelings in voting for an overseer of the roads or overseer of the poor? Certainly there will be no such things. People will be all interested in their general elections and they will come out and vote, and as the gentleman from Kanawha said you will get a general expression of the people. They have become tired of elections in my county. Not long ago a man was elected overseer of the poor by two votes. He had only two votes, there was but two cast and those two elected him; and it proved that he was an idiot and the court would not permit him to qualify. All a man has to do is to peddle round a few friends and get them to come out, to be elected; because people will not come out, but if you wait until a general election, you will have good men elected.

The vote was taken on Mr. Stuart's amendment, and it was lost.

On motion of Mr. Soper, the Convention adjourned.

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XXXII. SATURDAY, JANUARY 18, 1862.

At the appointed hour the Convention reassembled; President Hall in the chair.

Prayer by Rev. R. V. Dodge, of the Second Presbyterian Church.

Minutes read and approved.

THE PRESIDENT. When the Convention adjourned it had under consideration the adoption of the second section of the report of the Committee of County Organization. The question is on the second clause of the section.

MR. SINSEL. The sentence begins: "They shall also biennially elect one justice of the peace." I move to amend that so that the election shall be every four years instead of two.

A MEMBER. That is not in order.

MR. VAN WINKLE. It was understood, sir, yesterday that this section should be taken up sentence by sentence, and when we closed last evening, we were on the second sentence. The question is now on the adoption of that sentence.

MR. BROWN of Preston. Do I understand that the proposition as amendable? I was about to propose an amendment of this kind. I am dissatisfied myself very much and I believe quite a number of the gentlemen of the Convention are upon the result of the vote fixing the time of the election for these officers. I propose to amend the section in this way so that it will read: "They shall at the first township meeting and annually thereafter" elect, etc., so that there shall be an occasion aside from a small election for the gathering of the voters of the township. I am satisfied that these frequent elections are very disagreeable to the people. Within six months we have had in our county a great many elections. The result has been that the people are becoming very tired of them and that but few comparatively attend these elections and very important and responsible offices are filled by the votes of but few people. My object is to do away with numerous elections; and I cannot see why the voters assembled to attend to their township business at their first meeting and annually after their first meeting cannot hold this election. I do not know that my amendment will exactly meet the case. My idea is that an election shall be held annually after their first meeting. Perhaps amendment would not apply to the first meeting, because there could be no meeting, as a matter of course, without; but that this election shall be held at the meeting for supervisor and these other officers. I will try to reduce my proposition to writing.

MR. VAN WINKLE. If I understand the gentleman from Preston, his object is to have the township election held on the day of the town meeting. Well, that is entirely in accordance with my views; and, as I said last evening, I thought it was so provided. I am not so certain whether the first clause would not make it so, that on that day they "shall transact all such business relating exclusively to their township" as may be required. But the amendment of the gentleman from Preston would make it certain, and I would cheerfully accept it if it were in my power to do so. This would leave the time for holding these annual town meetings not fixed. Perhaps it is better not to fix it in the Constitution, because, once fixed here, it would be inflexible and could not be changed. It would be desirable to have them all on the same day.

This might be left to the legislature if not to the supervisors of each county. But so far as it tends to their election on the same day as the town meeting, I am in favor of it.

MR. POMEROY. I have no objections whatever to the amendment of the gentleman from Preston.

MR. BROWN of Preston. I propose, then, to make it read: "They shall annually at a township meeting, elect," so that it may be regulated: so that this election shall be held at the meetings of the townships. And I presume the legislature can fix the time or can carry out any detail as well as we can and it is not necessary to fix any specific time when the election shall be held, only that it be at a township meeting.

MR. VAN WINKLE. Would it not be better to say: "They shall annually on the day of the township meeting?"

MR. BROWN of Preston. That is the proposition.

MR. DILLE. I would suggest to my colleague and also to the gentleman from Wood that it would be better to designate the day for this election; that the amendment should be something like this: "They shall annually, at their stated meeting, on the first Thursday of April," so as to have a definite time for holding this election. It seems to me it would be important.

MR. VAN WINKLE. There is a difference of opinion about fixing the day. If the gentleman would withhold his amendment, let us vote on the proposition of his colleague so as to settle the point that these elections shall be held on the same day, and then the amendment fixing the time for holding the town meeting would reach the case.

MR. DILLE. Yes, sir.

The vote on Mr. Brown's motion was taken, and it was agreed to, Mr. Stevenson of Wood being in the chair.

MR. VAN WINKLE. Does the gentleman from Preston wish to offer that amendment now?

MR. DILLE. If it would be in order to do so.

MR. VAN WINKLE. I was going to suggest that it now reads: "They shall annually on the day of their stated town meeting."

You can add there if you choose that it shall be held on the first Thursday of April.

MR. DILLE. That is the amendment I desire.

MR. VAN WINKLE. There is, as I have already stated, a difference of opinion as to the propriety of making it here or leaving it to the legislature to fix it, because any day that is fixed absolutely may be found inconvenient. It has been proposed that it be left for the supervisors to fix it. It does, however, appear to me the day ought to be the same throughout the State.

MR. POMEROY. If that amendment is before the house, I hope it will be adopted. There must be a time for holding the stated township meeting, and I thought it was all covered in the first clause; but as it was thought not to be and was necessary to make it definite, the amendment of the gentleman from Preston has been adopted, and now let us say the first Thursday of April. I am not in favor of leaving all these over to the legislature or board of supervisors. Let us do what we have need to do and let the other bodies do what they have got to do.

MR. DILLE. I would merely remark that I am not particular about the time when these elections shall be held; but it seems to me that there ought to be uniformity throughout the State; and, further than that I do not think we ought to leave the matter to the legislature to change it from time to time. One of the difficulties that I have noticed in reference to these elections is this: that the legislature is continually changing and annoying our people by fixing different times for holding the elections: and that is one of the perplexing things that has annoyed our people more than anything else. And I am not particular, I am free to say, as to the time, and I think this Convention can in the exercise of a sound judgment agree on some time; and from what appears to me now I think that is probably the most favorable time that can be fixed. But should the Convention determine that otherwise before adjournment we can very easily change the day. Hence I am now in favor of this amendment and I think it important to fix that time whether we subsequently change it or not. If there should be reason for changing, I am willing to change it: but I want the time fixed. I moved to fix it.

MR. VAN WINKLE. I would like to submit to those gentlemen who are more familiar with the habits of the country people than

I am living in town, whether if these township meetings, which are mere neighborhood meetings, whether Saturday, as the day of the week, would not suit them better than any other. I know they hold justice courts and things of that kind on Saturdays. I do not know but they might prefer that day.

MR. HERVEY. I would suggest that there are some Seventh Day citizens of this commonwealth.

MR. VAN WINKLE. O, I beg pardon; I did not think of that.

MR. HERVEY. I am not one, but I prefer it remain as it is. I agree with the gentleman from Preston that it would be better to fix the day. The time fixed here suits my views very well.

MR. RUFFNER. I will simply remark, sir, formerly our annual state elections were held in April. Our people being an agricultural people the month of April may be set down perhaps as their busiest month. Hence I suppose that consideration had much to do with changing our elections to the latter part of May, when all the spring crops have been put into the ground. I think myself that it may be found in practice to work very inconveniently to many portions of the country at least to fix the elections at that particular time. Indeed, I question whether this house can with propriety put in the Constitution any fixed day, because you may run against the convenience and perhaps the wishes of the people on that subject and it will be impossible to change it. I believe, sir, it would be better to leave the day of election to the legislature that it may be changed if found necessary; but that it will be on some uniform day I have very little doubt.

MR. VAN WINKLE. These townships, supposing they are arranged on the size of the United States township, which I think will bring them nearly to the size mentioned by Mr. Jefferson and about what has been found a convenient size for them—that is, six miles square, containing an area of from twenty-five to forty miles. Now, if they were six miles square the diagonal would be eight miles; so that no man would have more than eight miles to go. Well, now, supposing the place of the township meeting is fixed in some central position he would not have more than four miles to go. In old times, I believe, everybody used to go away to the courthouse to vote. The election precincts before the present constitution were few and far between, and it really made considerable difference to a voter, for some of them, if they went to the court-

house, had to take two or three days to do it. But I apprehend if the distance is no greater—and I suppose we might say the greatest distance any man would have to travel in the township would not exceed six miles—now that is but a half days ride out and in, and the inconvenience from any day would not be as great as if we were fixing, perhaps; but it would not effect the state elections. There they would not vote in the township, properly, and they might be for state elections divided into more than one precinct, though I suppose a poll in one precinct would be a fair condition. I do not think the same objection lies to a day that did in the old times.

MR. RUFFNER. I would beg the pardon of the gentleman from Wood by stating that I apprehend in counties situated, at least, as ours is that instead of these townships being six miles square, in instances they would have to be twenty miles long and a half mile wide, because almost impassible mountains lie between the creeks, and the settlements are entirely upon them.

MR. STUART of Doddridge. In Doddridge, we have four districts, eight election precincts, and I have no idea we will have eight townships at all. Well, sir, it is a large territory, rough country, and always upon election days it takes the time of the whole people of the county. Now, in thickly settled parts—for instance, Wheeling or Parkersburg, it would be very convenient; but in the agricultural parts of our country it will be very inconvenient to come out in April generally to vote, and it will always be a slim attendance. Just reflect on it. In the Spring, in the most busy seasons possible for farmers. I am a farmer and know how that is. There is scarcely a day in April that the farmer can spare from his farm. And it does seem to me we should adopt some other time. If you must have this election different from general elections, you should fix on some other period.

I believe it is not in order to move to amend the amendment by saying the fourth Thursday of May and if that is not in order I would fix the fourth Thursday of October, with a view of moving to have the general elections at that time also. Our people will be better satisfied and less time lost. They are tired of this thing of so many elections. I do not like to move the fourth Thursday of May from the fact that it might be considered not satisfactory with the test vote last evening; but I move to amend by inserting the fourth Thursday of October.

MR. VAN WINKLE. I believe the gentleman would be perfectly in order to make it the fourth Thursday of May. This third clause has been amended since that vote was taken. It comes up in a different form. I would like to say—for I do not want to be too tenacious in any of these practical matters, though as chairman of the committee I ought to see that the report has a fair chance—that personally I am not tenacious about any merely practical matter and wish them to be arranged to suit the convenience of the people. I am aware that in the more densely populated counties almost anything would be convenient; and it is therefore proper that the convenience of the people inhabiting the sparsely settled districts may be consulted; and I should be pleased to hear from them on every occasion as to what would suit them. The gentleman from Doddridge tells us a large portion of his county is in that situation, and I have no doubt truly so far as he is concerned, but I would suggest to him that in the amendments adopted this morning the township meeting and the township election have been thrown on the same day and that I think the state and Congressional elections had better be thrown on another day. When people come together for their annual township meeting can just deposit their ballots for township officers, and it would be better that all the changes in the township should come up at the same time; that the fiscal and political year of the township—that everything should end on that day and begin with it. I would therefore suggest to my friend whether we had not particularly looked to the advantages of holding these township meetings and elections one day and let the State elections be fixed for another day. It appears to me it would be almost impossible to hold a township meeting, which will take some time, on the same day that we are holding state elections. The same officers might perhaps be wanted to attend to the other business. There would be some inconvenience in it I think.

MR. POMEROY. I just repeat that I know of no state in the whole United States where the township elections and the general election are held on the same day. These township matters must be consulted about. We have already adopted that they shall have a stated meeting for doing so. Then is the time when they should elect their township officers, not when men are asking them to vote for Congress and house of delegates. It is not the time to attend to township matters. I cannot think of a day freer from objection than this first Thursday of April. What time does the farmer

have more leisure? They are not ready to sow their oats; they are not ready to plant their corn; and I will venture this, that in the great majority of the townships a man will not lose more than two or three hours to vote. If a man is engaged in working, he will go early; and if he does not wish to do that he will turn out a little earlier at noon and he will go and vote and go back and perhaps make as good a day's work as he could if he had been there all the time. The election used to be the fourth Thursday of April, and this provides for the first, just at the breaking up of the winter season. I hope the amendment of the gentleman from Doddridge will not prevail but the amendment of the gentleman from Preston will.

MR. PAXTON. I was impressed with the views of the gentleman from Kanawha on this subject. It appears to me it would be a great error not leaving it to the legislature to fix this day. If we should and they should fix any day that might be inconvenient, it could be very easily changed, but if we fix a day it might prove a very inconvenient one and there would be no remedy for it.

MR. HAYMOND. I am in favor of the first Thursday of April. I think it would suit our people best.

THE PRESIDENT. Does the gentleman modify his amendment so as to make it May instead of October?

MR. STUART of Doddridge. No, sir; October.

MR. BROWN of Preston. I am not satisfied with either amendment that is before the Convention, because I believe it is restricting the people rather too much; and while I am not in position now to offer a further amendment still I may suggest, I presume, my idea on this subject. It would be that we should fix no particular day of the week and that we also should give some latitude as to the month. My suggestion would be the insertion of the words "which should be held in the month of March or April," so as not to restrict the people to any particular day of the week, which might be objectionable. Let them select their own day; and let them hold this stated meeting, one of their stated meetings, in the month of March or April, and have a little latitude to select their own officers. This is merely a suggestion. I offer it for consideration of the Convention.

MR. POMEROY. That suggestion will have to come in, of course, after these amendments are voted on. I hope the last amendment

will be voted down and that the latter will be decided in the affirmative, and that will settle the first Thursday of April.

MR. STUART of Doddridge. I sincerely hope it will not be voted down. If there is any argument in that I desire to have the benefit of it. I am not in favor of the idea suggested by my friend from Preston. I think a day should be general; that whatever day one township meets to elect their officers, every one ought. My object in making the amendment "fourth Thursday of May" is because it is a time when it would better suit the farmers to turn out. I do not like to see these sparsely attended elections. It has the result of electing persons incompetent to fill the offices. That is the truth of it. We have a great many incompetent officers filling these offices, from the fact that they were elected by a vast minority of the people. But if the people turn out to general elections, it will always give us good officers; and unless they do it, these officers elected by certain men carrying their friends to the polls and getting them to vote for them and a jag of liquor will elect most any man because the people do not turn out. If they came out there is always enough good sense in the people to elect the best man. But they cannot spare the time. If you fix this election on the first Thursday of April, which is the most busy season of the year to the farmers and in it every man who is a laboring man is superintending his farm and pressing his work ahead in order to get his crops in. In October they have made their crops and are prepared to go out better than in April. I must admit my object in moving the fourth Thursday in May is in order that the general election may be set for that time also.

I again repeat the argument of the gentleman from Hancock, that I hope it will be adopted (Laughter).

MR. HERVEY. The very last reason offered by the gentleman from Doddridge is the very reason I shall vote against his proposition. I hope this Convention will not consolidate the two elections. Experience differs as to what is the most advantageous season of the year. In our county the slow growers are just in the midst of the hay harvest; and I do not believe this Convention could fix any day which would suit our people less, unless some day in the harvest-time. Besides, sir, I believe the committee had very good reasons. That is a part of this report I shall endorse very cheerfully.

MR. LAMB. Mr. President, I am favorable in general to the township system. It is carrying still further the great principle

of our government. We have a government of the United States for all the people for an operation in relation to all matters in which the several states are interested. We have the states, then, for the local concerns of the states. I am willing to carry the general principle still further, to give the counties, upon some regulated system, the management of their local concerns; and still further, to give the township the management of their peculiar interests. But there is one principle in reference to this matter we ought, I think, to bear steadily in mind. It is that this thing is an entire experiment among us. We cannot see exactly how it is going to operate. We have not the necessary information here to prescribe an inflexible rule in all cases for these new operations. I would base the system, therefore, as much as possible by referring it to the legislature who can act in this case or that case as experience may show the necessity of such a provision or another provision; who will be able to act in reference to this matter after the thing is tried by correcting anything that may be found to operate inconveniently. I think it is rather a bold movement on the part of this Convention, with their information on the subject to attempt to prescribe inflexible rules where the thing can with propriety be left to the legislature. Under that view—the motion would not be in order—I shall move if it becomes an order, to strike out "the first Thursday of April" and insert "at a stated township meeting to be held at such time as the legislature shall prescribe." It may be found in practice that one time will operate great inconvenience. It may be found that it would be much better to hold these elections at the same time as the annual election, otherwise it may be found practically that you cannot get out any considerable portion of the vote to attend these township elections. All these are things that we cannot now very well see how they are going to operate; and to act definitely in this matter, it strikes me, we ought as far as possible not put into our Constitution—unnecessarily at least—inflexible rules on any point, but leave it hereafter to the wisdom of the legislature to act as experience may have shown them after the system is in operation will prove most convenient and for the welfare of these counties and townships.

MR. HAYMOND. I am opposed to referring this to the legislature. It generally has enough to attend to besides matters of this kind. The people would prefer us to fix the day here. They would be better satisfied; and I think the first Thursday of April is as good a time as can be fixed. Let us fix what day we may,

they will be satisfied. They can attend one day generally as well as another. They are not so industrious as some people seem to think.

MR. BROWN of Kanawha. I desire to ascertain precisely the question before the house.

The Secretary reported that the language "They shall annually on the day of the stated township meeting" had been adopted; that Mr. Dille had moved to add; "which shall be on the first Thursday of April"; and that Mr. Stuart of Doddridge has moved to amend this by substituting for that date "the fourth Thursday of October."

MR. BROWN of Kanawha. Would it be in order to offer another amendment? My amendment is, to strike out all after the word "elect," without saying when or where and let that be a matter to be defined by law.

THE PRESIDENT. We might dispose of these amendments.

MR. STUART of Doddridge. I will withdraw my motion.

THE PRESIDENT. The gentleman from Doddridge withdraws his amendment.

MR. BROWN of Kanawha. Then I move to make the amendment indicated by striking out all after the word "elect," so it will read "They shall annually elect one supervisor."

MR. VAN WINKLE. That would leave it to the legislature to fix it?

MR. BROWN of Kanawha. Yes, sir. The importance of that matter will I think be found not so inconsiderable when we consider that every unnecessary call on the people to elections is a great evil. I have known the strongest objections—the best I ever heard urged against our militia system, the uselessness of calling on the people of the whole State to muster when they learn that it was a work of supererogation; that all the benefits obtained by the numbering and keeping the militia organized was attained without the mustering, and what was learned by mustering was a day thrown away. And when you compared a million of men assembled to do nothing, or worse than nothing, there to cast away two millions of dollars, it was no inconsiderable tax on your commonwealth. Here you are to call out all the voters of your State, to do what? Why to elect their neighbors, of whose qualifications

they are as competent to judge on the day of the general election as any other. And when they come out to vote at the general election they would cast their vote for their neighbors just as well as for their county and state officers. If there were fifty to vote for, a man is as competent to do it on the same day when that is a subject of consideration as if you divide it now, and when another day comes a man if found in his cornfield and says: "This is a trifling matter," and will not go to the polls. Counties that can cast 2000 votes cast perhaps 200. That shows either that your people have lost all interest in their part and disregard the privileges that constitute freemen, or that the elections have fallen into such disrepute that they will not put themselves to any trouble to carry them out. I say that is a great evil, because it tends to lower the estimation in which they hold the elective franchise; to bring it into contempt; tends to place the whole power of the commonwealth in the hands of a few who will from interested motives take efficient means to secure the few friends that they may have to be at the polls on the day, and knowing the fact that the people are careless they will be the more diligent and secure the few friends and have them at the polls. I will admit that in every general election you will have some evil to contend with from the fact of party organization, yet it must be admitted that there is one element of purification in every republic, that while in the very nature of the thing these institutions cannot be had without evils yet these very evils have benefits in them. Every rose has its thorn. When you bring out your people entire, if one party is predominant then it will triumph; and when a result is reached by a clear majority of the whole vote of the county, it is always more satisfactory than if they are triumphant by a partial vote. So that take it in every aspect it is better to have all these elections on one day, or at least the subject to the wisdom of the legislature who can judge, and who if they have judged wrongly can change it as the people may command. It is a strange idea to me that we have suddenly become so perfectly alarmed and apprehensive of our legislature; that the legislature, which is emphatically the representative of the people, who are officers chosen annually for the very fact that they are representing the wishes of the people and that if they do wrong at one time they can be turned out at the next—that it seems to be a studied effort to take from them every possibility of judging as the occasion arises in order that they may decide rightly, and arrogating to this Convention all the wisdom, past and future, like the Medes and Persians by irrepealable law;

that what shall be done here is alone right and never shall be altered. If the legislature fix a day that is found inconvenient, they can change it. If you fix it in the Constitution, they cannot change it and have no resort but to submit to the wrong or tear up the Constitution. And whenever a constitution fails to answer the demands of the public, men will commence warfare on it and will never cease to agitate until they tear down the foundations of your government. Wisdom requires that in laying the foundation of your State you should so lay it that the will of the people can be fairly expressed, so that whatever their mandates require may be carried into execution. I hope therefore the fixed day will not be adopted.

MR. HAGAR. I favor the resolution of the gentleman from Kanawha. I have been observing elections for several years. I am very well satisfied with the wisdom and ability of this Convention to discharge all the duties—at least to a great extent—devolving on them; but for one I am not afraid to trust the legislature that it may act in accordance with the Constitution formed by this Convention. I feel satisfied they will better understand what time will satisfy the people to hold the election than we possibly can. It is a new thing with us, this township business, township elections; and when they have some experience in this matter, if it is proper to change the day for the convenience of the people in general throughout the State, no doubt they will do it. They have been changed, as was referred to by some of the gentlemen who have spoken. I recollect when elections were held on the Third Monday in April. All had to go to the courthouse. I remember when Logan County was organized the people came from the far edge of Raleigh to vote. Under the constitution made by the convention held in 1829-30 there were elections precincts that were too large, and people had to go a great ways. We have them now smaller, but while this is a fact that the changes have been a benefit in the past they may be still made an advantage to voters. I favor the motion that it be left blank, that the legislature may fix the time. If the first time they fix does not meet the convenience of the people they can remedy it.

MR. VAN WINKLE. I would like to suggest to the gentleman from Kanawha a little alteration in the form of his amendment but the same in substance. I would like to say: "They shall meet annually," which would make it a town meeting, "on such day as

the legislature may appoint by the general laws." That would imply that the day is to be the same in all the counties.

MR. BROWN of Kanawha. I cannot accept it. I do not think it improves the proposition. The legislature are obliged to pass an election law. That there can be no election held until they do is perfectly certain. The Constitution does not determine elections. They shall annually elect, is simpler, shorter and more satisfactory to my mind. The legislature must pass laws to put this Constitution into effect.

MR. HERVEY. I hope the motion of the gentleman from Kanawha will not prevail; for the first reason, that if you allow the legislature to blend the township and state elections and they should all be held on the same day, you must have as many districts, as many voting places as there are townships. That would be evident. It would complicate the thing. Now, as to the objection of making this provision in the Constitution, why our present constitution has fixed that day. The fourth Thursday of April is fixed in our constitution, and it is a day understood by the whole people. It is not vacillating. I hold, further, that whenever the people of any country become so derelict in duty as to fail or refuse to turn out to sustain their country and the country's interests and support the men who will do it, they do not deserve to be free men. If our project is carried out of combining the township and state elections you must have the points of election for state conveniences, as you will have townships which may in some cases work harshly.

MR. PAXTON. Has not this sentence already been amended once by the gentleman from Preston?

THE PRESIDENT. Yes, sir.

MR. PAXTON. I should like to hear the section read as amended.

The Secretary read the motion offered by Mr. Brown of Preston which was adopted, the sentence reading as amended: "They shall annually on the day of the stated township meeting."

MR. PAXTON. It might make a change in the wording of the gentleman from Preston.

MR. BROWN of Kanawha. I do not see that that would necessarily make any change. This leaves that stated period to the legislature, as I understand.

MR. PARKER. How will it read when amended?

THE SECRETARY. "They shall annually on the day of the township meeting elect one supervisor." Mr. Dille moves to amend by adding: "Which shall be held on the first Thursday of April." The gentleman from Kanawha moves to amend by striking out all after the word "annual" between that and the word "elect."

The vote was taken on the motion of Mr. Brown of Kanawha, and it was agreed to, and it being in the nature of a substitute for Mr. Dille's motion, the question recurred on the adoption of the second clause.

MR. VAN WINKLE. I was going to suggest that by general consent if in case of going through this report there may be any change of officers desired or additional ones appointed this clause would be open for that purpose. We may have that understanding by general consent and then the vote might be taken on it now. If by the adoption of other features not yet part of the report it becomes necessary to change these officers that this clause would be open for that purpose when we get through.

THE PRESIDENT. The question is on the adoption of the clause with that understanding.

The clause was adopted and the Chair stated the question as being on the next clause.

MR. SINSEL. I now move to strike out, beginning in the 15th line, these words: "They shall also biennially elect one justice of the peace; and if the white population of their township exceeds one thousand in number, an additional justice, and as many constables as justices," and insert; "They shall elect one justice for the township, whose term of office shall be four years, and one constable, whose term of office shall be two years." I think two years for the term of magistrate is too short. By the time a man gets an understanding of the business he is out of office. I prefer four years.

MR. BROWN of Kanawha. What is the proposition, Mr. President?

The Secretary reported Mr. Sinsel's motion.

MR. VAN WINKLE. Mr. President, as to changing the length of the term of the justice of the peace, and as he is to be strictly a

judicial officer, I do not know that I have any objections, though I think it is a pretty long term for a bad justice of the peace to stay in; and I think the gentleman proposing this amendment may not have fully considered what may be the wants of the people. I am sorry I have not got the documents here but I have it at my room, giving the statistics that were gathered for the election of 1850; and it appeared there, if I mistake not—I wish my friend from Monongalia was able to be here, because he had much to do with the matter—the average was then one justice of the peace for each 381 of population. Now, it is evident that there are several counties here which if divided into townships not exceeding the ratio that has been fixed—that is ten, the largest number of townships allowed in a county, leaving out Ohio, which is a sort of exceptional case; but there are several having 12,000 to 13,000 population. They will, of course have 1200 to 1300 in each township. Now, the question for consideration which I wish to propound is this, whether one justice of the peace is sufficient to do the business for that number of people? I could produce the statistics I spoke of by the afternoon, and I will bring that book down here anyway because although it does not say what has been the condition of things for the last ten years it will show in this very matter statistics compiled for the use of the convention of 1850 what was the state of things previous to that; and, as I have already stated, my impression is that the average was one justice to 381 of population. Now gentleman can tell us better their recent experience with the number of justices they have had to do the justice business of the county and how many inhabitants have been represented by a justice. I apprehend it will vary some in different counties, as the business of the counties unquestionably will vary. We want to vote understandingly on this point. If one justice is enough for a thousand or thirteen hundred people, do not let us have more, but if not we certainly ought to have more. It is a question, I think, that can be determined by the facts. Gentlemen, especially from the large counties, who are more at liberty than the smaller ones, should appoint such a number as best suits their convenience. They can tell what they average to the population. There is another consideration in connection with it: I apprehend more business will be done by the justices hereafter than heretofore. The abolition of the county courts will to some extent necessitate this. I should like to hear from gentlemen what is the state of things in their counties, because it is a question that ought to be determined not from any prior opinions but from

the facts and experience in the case; for if we limit the number here, it cannot be changed without an alteration of the Constitution, and whether we had not better risk something on the other side than to make the number too small.

MR. LAMB. I would propose in reference to this matter the inquiry whether these details ought not to be left to the Legislature, to act as convenience may hereafter require; and with that view I would move to insert after the word "one" where it occurs in the amendment of the gentleman the words "or more"; and after the word "one" where it occurs in reference to constables the same word. Then the Legislature will prescribe the number of justices and the number of constables as convenience may be found to require. We have, for instance, in this county, if I recollect aright, eight magisterial districts. Each of these districts elects four justices of the peace. We have thirty-two for this county at present. The gentleman's amendment as it now stands would cut us to eight with a probable increase of the business before justices. I cannot undertake to say eight justices would be competent to discharge the business of this county. At any rate, I think we had better not adopt an inflexible provision with our present lights on the subject.

THE PRESIDENT. The question is on the amendment of the gentleman from Ohio.

MR. STUART of Doddridge. My experience is this in this matter: that the multiplicity of justices is simply for the accommodation of the people, not at all necessary to have them to do the business. One justice in a township is enough for the people to transact their business, and I can assure the gentleman it is amply sufficient. In my county with a population of six thousand one good justice is amply sufficient to do all the business of the county and it is done by one or two justices. When we happen to have a good one, he does the principal business of the whole county. We have four districts in our county. All those four districts center about the court house. Each corner of our court house is in a separate district, and pretty near the entire business of the county is done at the court house, and almost exclusively done by one competent man. We have four justices of the peace in the district—sixteen in the county; and, except during county court business, there are very few of them that do any business at all. I remark again the multiplicity of the justices is for the convenience

of the people getting to them. One justice is amply sufficient to do all the business that will arise in any township unless you make them entirely too large. I presume there will be no county but will have at least four townships and four justices of the peace from that up to 10, which I believe is the maximum. Now, sir, if we will adopt the amendment of the gentleman from Taylor, it would give but one justice to a township, and having the one for the township if these justices are paid for the business they perform it may be worth something in the township and will induce some man who is competent to take the office, while if you divide it up and cut it up no man really competent to do the business will take any interest in it, and it will be just as now, offices filled by men totally incompetent to do the business. My experience at least leads me to think the amendment of the gentleman from Taylor ought to be adopted.

MR. BROWN of Preston. I believe, sir, the statute requiring two justices to take the privy examination of femme covert has been repealed and it now requires but one. This seemed to be the necessity for so many justices of the peace, so that justices might not have to travel great distances to get two justices to attend to taking acknowledgments. My county is divided into eight districts, in each of which are four justices, making 32 in all. In the district in which I reside, in which is located the county seat, one justice of the peace does really all the business that is done. We have four but there is no necessity for them. Besides, Mr. President, we contemplate, I believe, to make this office of justice of the peace a rather important office, a permanent office, an office that will require the time and the attention of an officer; that will require him to keep an office; to devote perhaps almost the whole of his time to the discharge of the duties of his office. If so, sir—if this is the purpose designed by the report—I think, sir, one justice in a township is a sufficient number. He is a prominent man and he has a place where he may be found; and, as has been remarked by my friend from Doddridge, if you increase the number of justices you make the office a trifling concern and no man who has the qualifications for the office will seek it. Hence I am in favor of giving to each district one justice.

MR. VAN WINKLE. Will the gentleman tell us how many justices there are in his county, and the population?

MR. BROWN of Preston. There are 32 in the county; the population something over 13,000—some 1200 to 1500 in a district.

MR. VAN WINKLE. One justice to about four hundred inhabitants.

MR. SINSEL. I have had some experience as a justice of the peace—nearly twelve years as such, in the county of Taylor; and during the construction of the Baltimore & Ohio Railroad we had a large increase of business. Many attachments—hundreds of them—were sued out by individuals. I was the only magistrate that resided at the county seat. A large amount of the business of the county was done there. All these attachments were issued there and tried there. They would come there and consult the lawyers and clerk, and the whole run of the business came there. Well we had at the census of 1850 a population of something over 5,000, I think, and now it is over 7,000. Well, during the construction of that road a large amount of business was done at Pruntytown with no very great inconvenience to myself. I could have transacted three times the amount. And that was done gratis—no pay connected with it; and if you attach a fee to the office hereafter why men would be more ready and willing to devote their time and attention to it. During the construction of the Northwestern Virginia Railroad, the business was still increased again. The business was then done by about three magistrates, one at Fetterman, one at Pruntytown and one at Claysville; and they could have done ten times the amount of business. Now, if you want a competent man to fill the office of justice you must make the office respectable; you must make it a position of honor rather than one of degradation. Then men competent to discharge the duties will accept of it. We have twelve magistrates—three districts; and as a general thing three magistrates, outside of the business done by the county court, transact nearly all the business. The three residing at the little villages do the business. The other country magistrates very seldom come in to do anything; and that only occupies some three or four hours a day at each place. So I think one is abundance.

MR. WARDER. I hope the resolution of the gentleman from Taylor will be adopted. Experience has taught me about what he has said. I have been a justice myself and I find a justice can do an immense amount of business. I have given as many as 70 or 80 judgments a day myself; and I find no inconvenience; and I think it would be proper to make it an office of some honor. I hope the resolution of the gentleman from Taylor will be adopted.

MR. VAN WINKLE. I rise now for the purpose of giving notice that when the question is taken I shall ask for a division of the question, to separate the question of the length of the term from the question of the number of the justices. The remarks of gentlemen have satisfied me that if, as they suppose, these justices are to receive fees for their labors one will be enough for the largest township. If a man can, as it were, make a business of it and be rewarded for it suitably, I apprehend from what the gentlemen have said one will be enough. I am not opposed, either, on the view that justices are to be a strictly judicial officer to increasing the length of their terms.

MR. BATTELLE. Mr. President, I just wish to say one word, and that is, to begin with, that I agree with the gentleman from Doddridge that this matter should be regulated by reference to the convenience of the people. It does seem to me their convenience will not be consulted by making a change so decided and great as is proposed in the amendment now pending. You propose to reduce the number of magistrates just so far as, or as nearly as we can well go. Now, gentlemen tell us that in all these counties they have been accustomed to have four in a magisterial district and on a supposition that townships will be about that size you propose to have but one where you have had four. I am in favor of change where change is desirable, but I think that is a little too strong. I think the convenience of the people would be better consulted by having at least two magistrates in each township. And here is another reason: if you have but one magistrate he will sometimes be sick or absent. His business or other cause will sometimes take him away, and you tie up the people in that township when you compel them to transact all their judicial business before one magistrate and nobody else. It is sacrificing the convenience of the people unduly and unnecessarily. I am in favor, however, of one feature of the amendment of the gentleman from Taylor. I believe the term of service should be lengthened from two to four years and for the reason which he has very clearly and properly stated that when a man who comes from civil life perhaps without previous training, for this work has acquired by study and experience some qualifications for office he should not be so suddenly or soon removed as to deprive the community of his services. I am opposed, however, to the proposition of making in all cases at least but one magistrate for each township. I think there ought to be at least one for every township and two for larger townships; but it would suit me better to have two for every township.

MR. HERVEY. The very fact, sir, that we have had a multiplicity of magistrates heretofore obviates the objection of my friend from Ohio. They have been in training for the last ten years and are better prepared to discharge the duties of the office. I heartily concur in the remarks offered by the majority of the members who have spoken on this question. The district in which I reside has four magistrates. Of course, there was but one docket kept in that district and the magistrate who kept that did business. But I know justices of the peace in our county who have been justices for ten years and have never yet kept a docket. They go to court and discharge the duties there, but they will not keep a docket if it is possible to avoid it. They get no fees. A great many men are very much afraid that they will hurt somebody's feelings by deciding a case and consequently they will ward it off. Like all the other gentlemen who have spoken I have had some experience myself and I know this to be the practical working of it.

MR. VAN WINKLE. I would like to call attention of the Convention to a provision in the 7th section which reads:

"In case of a vacancy in the office of justice or constable in any township having but one, or of the disability to act of the incumbent any other justice or constable of the same county may discharge any of the duties of their respective offices within said township."

The gentleman from Ohio suggests that a justice of the peace might be sick or necessarily absent, and his argument implies that even the smallest township should have two justices. But the inconvenience he supposes is to grow out of it is provided for in this subsequent section. A justice may be sick or called away, and they get a justice from a neighboring township to come into that township and hold his court and do the business. I think that meets the objection of the gentleman from Ohio.

MR. LAMB. If any inconvenience should result from limiting the number of justices to one to each township, that inconvenience will apply just here in Ohio county. You limit the number of townships to ten. We have eight magisterial districts. Fix it as you will, we will have townships of 3,000, 4,000 or 5,000 inhabitants perhaps. If this rule can operate inconveniently in any respect anywhere it is just here. Even on the rule first stated by the gentleman from Taylor that three justices did business conveniently for that county, one would not be sufficient for a township here —for some at least. There ought to be some provision, it strikes

me at least allowing the legislature some discretion to regulate this matter according to what experience may show to be the necessity of the case.

MR. VAN WINKLE. Have you not under your city charter a number of justices called "aldermen"?

MR. LAMB. Yes, sir.

MR. VAN WINKLE. This could not interfere if that charter in that respect remains in effect.

MR. LAMB. What we call aldermen here in the city are by the very Constitution of the State declared ex officio justices of the peace. It is by a clause expressed in that manner that they derive their jurisdiction. There ought, then, at least to be as many here. That would prevent this section from repealing that clause of our charter. If that was done, why, it would probably obviate the difficulty so far as we are concerned. But if we had two or more justices to a township I suppose our aldermen might be dispensed with.

MR. VAN WINKLE. The county of Ohio has its population and is so exceptional that of course one single county ought not to rule all the rest, and particularly as there is no occasion that it should; because the gentlemen from that county can easily introduce a provision. We all know its peculiar circumstances, the largest city in the State, by which an exception could be made in favor of that county such as the gentlemen from that county might indicate.

MR. BROWN of Kanawha. I believe, sir, on considering this subject, that the section as it stands is about the best that can be made except in regard to the term. If it be the object in making justices to give them salaries or fees—which amount to the same—to enable them to quit all other business and follow this for a livelihood, then I imagine you are making government too expensive to be borne. The office of justice of the peace in Virginia has ever been one of honor and never of profit, and generally has been filled by gentlemen, more emphatically, perhaps, than in any other state of this Union. The addition of fees and diminution of numbers will not add to the character of the gentlemen who fill the office, in my humble opinion, and very little to the profits, for I do not believe it is profitable to diminish your number of justices so as to do the business of the county so far as to enable the officers that did do it to live by the fees without any other

calling. The office of justice is one more for the convenience of the people than for the benefit or support of the officer; and, as was said by the gentleman from Doddridge, one of its great conveniences is its proximity to those who are to ask his services. One of the inconveniences that has been found in dealing with justices of the peace is in getting at them; and the greater the number the greater the convenience. It is very often the case that it is not convenient for them to discharge the duties when called on. Whenever you diminish the number to one absolutely then you place the community of that district entirely at his disposal. Well, sir, it may be said if he fails to discharge his duty you may prosecute him for neglect of duty or remove him from office for some default; but this would be attended with delays, annoyances and difficulties. The better way is not to oblige the community to depend on one man. I have never yet seen any one community where there was not some choice between two men, where there are two; and I think it is wise for every individual in the community to have a choice when that can be done. I am not in favor of increasing the number of the magistrates to any great number, and I believe this section contemplates such an increase is necessary and leaves the balance to the wisdom of the legislature. Now, as has been well remarked, at the court house of every county will always be found to be transacted three-fourths of the business almost of the county; and no doubt a justice who resides at the court house, though his districts or township may not be one-fourth the size or population of other districts in the more remote parts of the county, yet it will be found that justice will have three or four times the business to do because all suits are brought to the court houses where the lawyers reside and do their business and there are continual applications to administer oaths before the justices of the peace for attachments before justices of the peace, and continual applications of everybody, who more or less, have business at the court houses and go where their business calls them and take their wives along to get their acknowledgments of deeds; and all these things are continually recurring more than anywhere else. It arises out of the very nature of our transactions, the very centralization that must exist more or less where the court house is. I will admit, with the gentleman from Doddridge, that one man can do the business if he turns his whole attention to it; and in our own county, which is a large one and has a good deal of business to do, from my own experience I am satisfied an efficient man would do at the court house as much as eight or ten scattered

throughout the balance of the county. Magistrates frequently postpone their cases to consult with the magistrate at the court house.

I therefore must oppose the motion of the gentleman, and if in order will move to amend it by striking out the whole of the amendment as proposed and insert in the section as it stands and insert the word every "four" years instead of biennially.

THE CHAIR. There are two amendments already.

MR. BROWN of Kanawha. Then I have no right.

MR. HALL of Marion. The county of Marion has a great reputation for its inclination to litigate. I have had pretty good opportunities of knowing the necessities of that people with reference to their litigation before justices, and if it were not for the object desired of having justices at convenient points such as proposed in the townships I would favor having but one justice in Marion, and I am satisfied he would do the whole business better than five hundred. Just as you multiply the number of justices you destroy their efficiency. I am satisfied, sir, that while it is true, the fees of a justice will not really in any one of these townships occupy the whole time of the justice so as to make his calling an honorable one to live by without attention to other business, yet to the extent that you make it worth more than now and to the extent that you multiply the thing and make it common, you really invite them to elect incompetent men, because they will say; "I will vote for this man; he treats me cleverly, and we will depend on some other man for the justice to do our business." If you say to the people that "you are selecting a justice of the peace to do your business, he is to be the justice," they will see to it that they get a good justice. You are more likely to. It is a notice to people in advance to be careful whom they elect. Some one remarked that if the people would not give proper attention to the selection of their officers, they did not deserve to have officers. If they did not give proper attention to their own interests, I would let them lie on the bed they had made. It will teach them to make a better one next time. We have got to make the people feel the importance of this thing in order to secure proper action in the matter. I trust we will not allow more than one in each township. There is a necessity for that. I trust we will have but one in each township; and then we will be more likely to have a good one; and we will avoid so far as we can the multiplication and addition of officers in the community.

MR. DERING. I am utterly opposed, sir, from my observations, to confining the number of magistrates to one in a township. There are various reasons that might be urged against this restriction. In the first place, as indicated by the gentleman from Kanawha, where you have only one in a township you inaugurate a little despotism there, and the people of that township are necessarily confined to that one man for the disposition of magisterial business of that district. In the second place, sir, there are many cases from which there is no appeal that are brought before a magistrate; and you confine the people of a township to that one person and in many cases you have no appeal from his decision. There are various considerations, sir, why some men in a township would not wish to go before a particular magistrate in order to have their business done. Personal ill feeling, neighborhood bickerings, and various other considerations that would prevent them going to him. But he is the only magistrate in the township and the people must necessarily go to him for redress of their grievances in all cases subject to his jurisdiction. Now, sir, the legislature has been increasing the jurisdiction of our justices, and you go to him with a suit involving $50—or I believe it has been extended to $100—and you must go to him to decide the matter. There are many important causes involving considerable amounts brought before him, and you have to rely on that magistrate's decision. From observation and experience magistrates when they have important cases before them, either criminal or civil, have called into their aid a magistrate of another neighborhood to come in and sit on the case. He has the benefit of his counsels and advice; but if you limit it to one in a township, he cannot have that advantage and benefit. There will be in my county some ten townships perhaps. Well, sir, we have now some 32 magistrates. If you cut it down to a magistrate for each township, you will only have ten in the county. Magistrates are cheap, sir, and the litigants will have to pay the piper for the adjudication of their small cases. Let us not then be deterred by this question of economy from giving the people all the facilities they need in order to promote the ends of justice. I am utterly opposed to one and would much prefer three or four.

MR. LAMB. The precise effect of the amendment I propose would be this: not to require that there should be more than one justice in each township but to leave that matter to the discretion of the legislature, who will act with the lights of experience before them. The amendment I proposed was to insert after the

word "one" the words "or more." Then the legislature would regulate this matter as might be found more convenient; probably start with one justice for each township; if it was found that would not work right, they would be at liberty to act in the matter as the convenience of the people might require. The great difficulty in regard to this matter will lie in this county because the townships will necessarily be as large in population as many counties. I do not object, even in that state of the case, peremptorily to the one justice, but I do object to tying us down to that by a rule that admits of no alteration whatever experience may prove to be the result of this system.

MR. HAYMOND. Mr. President, I am decidedly in favor of the amendment of the gentleman from Taylor. I believe one justice is sufficient in a township, I differ from the gentleman from Monongalia, who says he would prefer four. Now, sir, my people are tired of seeing so many justices. They told me when I came here they wanted me to cut down this county court business. I told them, sir, that if I lived to come here I should help to put an end to the county court system; and, sir, as to the business one justice can do it better than a great number. And I will say to the gentleman from Ohio that I have no doubt that one justice can do the business of Wheeling better than ten. If you have but one, you will always find him at his office. If you have ten you will never find any of them. That will be the result exactly. I therefore am decidedly in favor of only one.

MR. HAGAR. One justice of the peace might very well do the business of the township in which this gentleman lives. At the same time one might not be fully able to discharge the duties devolving on them in another township. The people have the right if they see necessity to ask to have another justice. If one is sufficient, that is all the people want. If they want two, let them have two. We should I think remember that, that people should have their choice; should be free. There is a great deal of power vested in this Convntion, and we should be very watchful that we do not transcend the right. The people should have power to ask the legislature to make these changes if they see they are needed. If they do not need another justice they will not ask for it. It is for us to say whether that township until another Convention is called shall not have but one justice. That is more than I am willing to say while I am one member of this Convention.

MR. VAN WINKLE. Would it not probably accommodate all the gentlemen, at least all who have expressed themselves, if we adopt the four year term for justices and increase this number; that is, towns having one thousand to 1300 to have one justice; the second justice in the few townships where needed as in the exceptional case of Ohio county. I think that would meet the views of the gentleman from Kanawha, who desires a second justice where the numbers are sufficient. That could be effected as I have indicated. It would embrace the idea of the gentleman from Taylor himself. It would be giving the second justice only in what may be considered purely exceptional cases; and, of course, if we can provide for exceptional cases the same spirit that leads us to attempt to suit the convenience of the people in other respects would lead us to satisfy it in that respect. It seems to me that so far as gentlemen have expressed themselves two alterations would meet the views of everybody.

MR. PARKER. I have looked through the report, and I do not see any exception made of Wheeling. I had supposed that was excepted from the operation of the township law. I do not find any. I would inquire whether the intention is that the law shall apply to the city of Wheeling. I never knew where there is an incorporated city that the township system was applied to it. I think in a number of states where the numbers in a township become so great that the people cannot act in a body conveniently the practice is for the legislature to grant a charter and they pass from a township to a city. That has been my experience as far as it has extended. I think I never knew an incorporated city to be subject to the general township system. Seems to me there would be great difficulty in applying it to the city of Wheeling. I would inquire if that is the case.

MR. VAN WINKLE. I had drawn up, though I have not got it with me, and intend to offer when we get through this report, some general provision in reference to the incorporation of towns and cities. I do not know that as I have drawn it it would meet the case of the gentleman from Cabell; but I will state here that before this report is disposed of I shall offer as an independent section a provision in reference to incorporated towns and cities; and then any peculiar provisions that are necessary to put in to meet the case could be offered as additions if I did not provide for that case. I think, however, the suggestion I have made when up before will probably meet the views of all so far as the counties outside

the cities are concerned; and I presume if the cities are to be divided into townships—if the city of Wheeling is to be divided—it would suit the representatives of that city not only perhaps that the subject of incorporated cities but of future incorporations also should be left to come up as a matter by itself.

THE CHAIR. The question is on the amendment of the gentleman from Ohio: Insert in the amendment of Mr. Sinsel before the word "Justice" the words "or more," and before the word "Constable" the words "or more."

The vote was taken and the proposed amendment was rejected.

THE CHAIR. The question recurs on the amendment of the gentleman from Taylor: To strike all of the third sentence from the beginning to the word "but" and insert: "They shall elect one justice of the peace for the township, whose term of office shall be four years, and one constable, whose term of office shall be two years." There is a division on it.

MR. VAN WINKLE. I will move to amend the amendment by making the term three years instead of four.

THE CHAIR. The question is on the amendment of the gentleman from Wood, to make the term three years instead of four.

MR. BROWN of Kanawha. I prefer four years, decidedly.

The amendment was agreed to.

MR. VAN WINKLE. I believe now I shall feel inclined to vote against the amendment of the gentleman from Taylor, with a view if it is rejected of offering an amendment increasing the number, that is to elect the second justice.

MR. BATTELLE. I wish to say that I am opposed to the amendment as it stands for the reason already given. In addition to that I think one justice to a township should apply only to townships too small to need more. I wish the Convention to understand that I make that objection without any reference to Wheeling, for it is likely some provision can be made by which she can be accommodated. But I do think, for reasons already given, and for others which might be given, that to tie the legislature down to one magistrate for a township would operate most injuriously for the interests of the people, and that is the thing to be consulted here. Now, suppose we have a township ten miles long. It may chance

that the person whom the people believe to be the best qualified lives away in one corner of that township. You cannot expect in a township, especially sparsely populated, that a man can keep an office separately from his dwelling in some central part. You then require the people in that other end to ride ten or twelve miles and an equal distance back, to reach a magistrate. There is no necessity for it. A provision granting at least permission to have two does not oppress anybody. It is a question in which the simple point involved is the interest and convenience of the people. If the people want that magistrate to do any business for them they will call for him and pay him for his services; if not, why not, and that is the end of it. Now, will you tie up the legislature so that in cases of that kind they shall absolutely elect but one magistrate for all time, if our Constitution lasts that long? My objection lies not in reference to any particular locality, but in reference to what I conceive to be the convenience of our people thoughout the bounds of the new State. The consideration heretofore offered by myself when I spoke before, and repeated by other gentlemen perhaps in much more forcible shape than I put it that it seems to me in reference to the magisterial or judicial business, you subject the people to a sort of little petty despotism when you say their whole business shall go before one magistrate or anybody else. A man will be sick or absent temporarily on other business. That is to be expected. I have no idea that business in most of the townships will be such as to justify a man in leaving his farm or merchandise to go into some central point to open a magistrate's office. He must be allowed, of course, to exercise his discretion in leaving home occasionally if he wants to. He must be allowed to get sick once in a while if he wants to. In all such cases you require the people to go off into a neighboring township or leave their business unattended to. One of the functions of a magistrate certainly is, a very important one, throughout all our country, is a conservator of the peace. I profess to be somewhat acquainted with western Virginia. My whole life has been spent among its people, and I have tried to keep my eyes open in reference to the workings of these things as well as other things; and I have known instances where the peace of the community, the best interests of society, have suffered merely because no magistrate was accessible to attend to interests that required to be attended to. I do not pretend to say that in every township there should be two magistrates. There may be instances where one, so compactly is it arranged, can do

the business. I object to tying down the legislature, however, by saying that there shall absolutely be but one for all time.

MR. STUART of Doddridge. The gentleman from Ohio and myself differ on this question and I know we do honestly. I feel some interest in this matter. Now as to this matter of a despotism if there shall be but one justice in a township, the same objection might be made to our judges of the circuit courts. Why in the world do we embrace a large boundary and ample compensation to judges of the circuit court?

MR. BATTELLE. Will the gentleman permit me one moment to say that there are provisions, always have been, by which if one judge of a circuit is not able to hold a court his neighbor might do it? But even granting that there may be long continued inconvenience to the people in respecting any business he is to do, this is a neighborhood matter, a kind of community affair, and an everyday affair, and the need of a magistrate may arise every day in the year. Not so in reference to the judges of the circuit court, who heretofore have only visited us once in six months.

MR. STUART of Doddridge. Now the argument that in this case where one cannot sit another can be obtained is just exactly the provision in this report of the committee where one of the justices of the peace is not eligible to sit or incompetent, or sick, that a justice of his neighboring district can sit. Now, I have been a good deal acquainted with the operation of justices of the peace in our country. I have paid a great deal of attention to it. I think the interests of a township would be promoted by having one justice and having him in such position that he will keep an office and we will all know when and where to find him. Now, if you have two or three justices of the peace the business may be divided among them. They will not give the same attention to it and have the same interest in the thing, and it is very seldom you can ever find one. They take no interest in the matter. They are not paid for their services, and if you go to one you are likely to go to two or three before you find one. Now I think to have but one the business will justify him keeping at least an office and record of his proceedings, and when you want a justice you will always know where to go and where you will find him. I would rather go four miles where I would have a certainty of finding a justice than two miles without knowing whether I will find him or not or whether I can be accommodated if I do find him.

It strikes me there is this advantage in the amendment of the gentleman from Taylor. I know well, as I before stated, that one justice in the district, even among a population of two thousand—taking the gentleman's county from Ohio, which has a population of 22,000, if there be in it ten townships, even to that extent a justice can do all the business; and if you increase the pay to justices it will only be for a matter of accommodation that the citizens could ask, not to get the business, for it can be done by one; and I hold the accommodation would be much greater to have one who will have such compensation as he will take an interest in the business and be ready to accommodate those who need his services.

MR. DERING. I do not desire, sir, to trouble this Convention with any lengthy remarks on this subject; but, sir, I know my people will be very much disappointed if we confine the number of magistrates and make them so few. In reference to the judges of the superior court, they have their periodical sessions. A few attend there and you can get through and your business done at the sessions of their courts. But not so in reference to justices. They are the conservators of the peace, and there are very frequently riots and sudden outbreaks and violations of the law. And suppose they are sick, or away from home, or suppose they live at some remote corner of the township, why, sir, when you need a sudden remedy for such wrong you are deprived of it entirely. It seems to me you had better leave this to the discretion of the people. If they want more than one, let them apply for it and get it. If they do not—if there are more than 1200 inhabitants according to the amendment of the gentleman from Wood let them have more justices. In a thickly populated township one justice is not sufficient to do the business. It seems to me that in every township in the State—particularly in the large townships—you can find more than one that is competent; so that you will not necessarily be confined to one man. You can take two, and you can certainly select two men that are amply qualified to do the duties of a justice of the peace. It seems to me that every consideration that ought to operate on anybody in the world ought to operate on us to give the people more than one justice of the peace.

MR. VAN WINKLE. I would like to call attention to a clause in the 8th section which provides that criminal jurisdiction of a justice of the peace extends throughout his county, wherever he is in the county. Of course, that has not been acted on, but I

properly call attention to it in advance to show the gentleman that the case he suggests is provided for.

The vote was taken on the amendment offered by Mr. Sinsel, and it was rejected.

MR. VAN WINKLE. In accordance with what I said, I will move, if it may be done, by one motion, to insert 1200 instead of 1000.

MR. STUART of Doddridge. In order that it may be discretionary with the district, I would move to amend by saying "may" elect.

Mr. Van Winkle accepted Mr. Stuart's amendment; and the vote being taken on his own motion as thus amended, it was agreed to.

The Secretary asked for the precise amendment.

MR. VAN WINKLE. As amended, it will read: "If the white population of their township exceeds 1200 in number, may elect an additional justice." I move to insert "triennially" instead of "biennially." It will be necessary to thus insert "biennially" again or some other word before "Constables", but let us leave that aside until we settle this.

MR. BROWN of Kanawha. I propose four years, then, sir, as an amendment.

MR. PARKER. That has been passed upon once.

MR. VAN WINKLE. No, sir, only as to an amendment which was defeated.

MR. LAMB. It will be of some interest to know how this great question has been decided in other states. I see in the New England states the terms of justices are generally five years or above it. Virginia, New York, Indiana, Illinois, Michigan, Kentucky have four years.

MR. STEVENSON of Wood. Ohio has four years.

MR. LAMB. No; Ohio has three years. New Jersey and Pennsylvania have also five years. Tennessee has six years; the balance of the states have three years and two years. So far as the majority goes they are in favor certainly of a term at least as long as four years.

MR. BROWN of Kanawha. I would remark that we have fixed the senatorial term at two years. The reports I believe for governor, sheriffs, clerks, prosecuting attorneys and other officers are generally fixed at either double or treble the senatorial term. I should prefer four years. It is double the senatorial term. I think there are many reasons, if you go beyond the senatorial term for the election of justices at all that four years is the better term. Now, it is supposed the justice has learned something about his duty by practice and in consequence he will be better qualified to discharge it the fourth year than he would the third. The term is not too long if he should prove deficient. I can see no reason for three years if you go beyond one year. Take two or four.

The hour for recess having arrived, the Chair was vacated until 3:30 P. M.

* * * * *

THREE THIRTY O'CLOCK, P. M.

At the appointed hour the President resumed the chair, but few members present.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Kanawha.

The Secretary reported it: Mr. Van Winkle had moved to make the term of justices of the peace three years instead of two as provided in the report. Mr. Brown of Kanawha had moved to make it four.

MR. VAN WINKLE. I do not think we ought to take a vote on a matter that has been the subject of debate with this small number of members present.

The Convention waited some five minutes, and there was still no quorum.

MR. STUART of Doddridge. Anything before the house?

THE PRESIDENT. The house has under consideration the adoption of the amendment to the amendment. We have been waiting for the members to come in.

MR. STUART of Doddridge. I would move a call of the house, Mr. President.

A MEMBER. Go ahead then.

MR. DERING. There are several members that have left for home. This will account, in some measure, for the scarcity of the members here. But others of them are at the court-house.

THE PRESIDENT. My impression is that where we have a thin house any way—

MR. LAMB. Perhaps we could get through with some business.

MR. VAN WINKLE. Yes, and have it all reconsidered or amended.

MR. STUART of Doddridge. There is certainly a quorum.

THE PRESIDENT. Is there any objection to proceeding?

There being none, the Secretary reported the amendment: The amendment of Mr. Van Winkle to insert "triennially" and that of Mr. Brown of Kanawha to make it "quadriennially."

MR. DERING. Mr. President, it seems to me we had better defer action on this matter at least until the gentleman who offered the amendment is here. It would be premature to take a vote during his absence.

MR. VAN WINKLE. I would inquire of the gentleman from Doddridge if the lower house of the legislature has adjourned?

MR. STUART of Doddridge. No, sir. I find on the last motion or two here to change the hour of meeting, he was one of the prompt men. If that be the case, we ought to go on with the business. The suggestion has been made that the section be postponed until the gentleman from Kanawha comes in. I said we had been extending this courtesy frequently to him; and I find on the last motion or two made with a view of meeting here early and sitting late the gentleman took the ground that we ought to be here early and late. If we do come here, let us go on with the business.

MR. VAN WINKLE. Well, sir, I am willing to pass by this precise sentence and see if we can do anything with the next. If we find we get further hampered and no other gentlemen come in we may as well adjourn. I suggest that we just by general consent pass by this precise question and see what comes next.

MR. STUART of Doddridge. I object to passing by.

MR. VAN WINKLE. I thought I was carrying out the gentleman's object.

The vote was taken on Mr. Brown's amendment and it was agreed to.

MR. VAN WINKLE. The vote taken only adopts the amendment to my amendment. It is not yet voted in the section.

The vote was taken on Mr. Van Winkle's motion as amended, and it was adopted.

MR. LAMB. As the sentence now reads, it would require the constables to be elected every four years. I presume that is not the intention of the Convention. I would move to insert in the 17th line before "as" the words "every two years". Then the section would read: "They shall also every four years elect one justice of the peace; and if the white population of their township exceeds 1200 in number, may elect an additional justice, and every two years shall elect as many constables as justices."

The vote was taken and the amendment adopted.

MR. STUART of Doddridge. I move to strike out after the word "justices" in the 18th line to the word "the" in the 19th line. I move to strike that out—the remainder of the sentence. I do not wish, Mr. President, that this should be retained here. This thing is referred back to the people every two years; and if they have a good constable, one that renders satisfaction to the township, I really do not see why he shall not be entitled to be re-elected if the people so desire. It is very difficult to get good constables. That is my experience in my section of country. If we find a constable that proves to be a good one, I cannot see why it is that he should not be eligible to re-election as often as the people desire to elect him.

MR. DERING. I shall oppose the amendment of the gentleman from Doddridge. It seems to me, sir, from past experience as well as observation in regard to the constables that it is not good policy to keep them in office too long and that it is well for them to return to the people and be out of office a while. Sir, in many instances in my county after a constable once gets to be constable he can perpetuate himself in office almost for an interminable series of years. Some of them have been there for a great many years. The result is that they have a great deal of unfinished and un-

settled business on hands. It is almost impossible to get money out of a constable's hands; and there are always a class of voters in most of the districts who will rally to the support at every election and endeavor to keep them in office. A business community desires that they shall settle up sometimes and their business come to a conclusion at some period. There are constables in our county that you cannot get a dime from. They have perpetuated themselves in the office by the lever they have on the classes they had business with and the result is their business is unclosed; you never can get it settled. It seems to me it would be a wise policy after two terms at least that they should close up their business finally. They ought to do that while they are in office, but they have many excuses for not doing it, and the result is that you cannot get any settlement with them. I think it would be much the better plan to place them on the same footing as you place other officers, and let this office have the interregnum that other offices get.

MR. VAN WINKLE. This provision was pressed on the committee from various sources. For myself I received more than one letter and message from friends in the country, not from my own county either, urging some provision like this. The objects of it have been, I think, truly stated by the gentleman from Monongalia, namely: to place the matter in such a situation that the constable would be compelled to close up his business at least once in four years. He is to be elected for two years and may serve for two consecutive full terms. So that if he is allowed, happens, to be elected to fill a vacancy that does not count, but he cannot serve for two consecutive full terms, making four years at least; and then public opinion seems to demand that he should be compelled to go out of office in order that it may become absolutely necessary for him to settle up the business. My impression is, although I have not much practical experience that it would be found rather a valuable provision. If the officer knows the time is coming when he has got to settle up he will perhaps be more prompt in settling up while he continues in office.

MR. STUART of Doddridge. I do not want to detain the Convention only two minutes on this question. I would simply desire to give the Convention my experience in this matter. It is very difficult to get a good constable, I remark again. In the county of Doddridge we have four districts and were in the habit of electing two to a district. In the course of the last six years I do

not believe that there has been but two constables in the county that has not in these years broken up themselves and the men who were their securities. There is but two good ones left in the county that would accept it. Now, sir, you say under such circumstances as that the people should not have a right to choose these men who have performed these duties satisfactorily is an arbitrary rule and should not be adopted here. It is not every man you can get to act as constable, and when you get a good man who agrees to take the office, who is elected and proves himself efficient and worthy I again remark I can see no propriety in preventing him from election to the office. The gentleman from Monongalia says it is an impossibility to get money out of the hands of constables. If that is the case I see nothing to gain by a perpetual change in these matters. Perhaps it would be better to retain them and they may finally, in some way, pay over the money. But if you must have a new constable, say every four years the same rule will be carried out and you cannot get money out of a constable anyhow. The only way you can get it would be to force it out of them according to law. But suppose you elect a constable and you find him performing the duty promptly to the hour and then you refused to vote for this man and vote for a man who will be the reverse of that in all probability.

MR. HAGAR. It is true it is pretty hard to get good constables, and it is pretty hard to get bad ones out of office. There seems to be a portion of the people in every county that thinks the constable that hardly ever collects and pays over is the best. Hence he always gets that vote. Most of them have their favorite friends and they go for them. My experience has been, as a general thing, on that subject that the longer a constable stayed in—especially those characters that did not collect and paid over hardly any—the longer they stayed in office the worse; not only broke up their first securities but their second in many instances. I think the probability is that there may be more than one good constable found in every district; and hence it is important I think at least that their term of office should expire at the end of four years anyhow. Try somebody else: if he is not a good one, turn him out. The securities are apt to be good for their conduct for two years. I oppose the amendment.

MR. DERING. The logic of the gentleman from Doddridge is this, that if you get in a constable that will not pay over, who has pockets full of the people's money, why he is full and let him be.

But, sir, I am not in favor of such logic. If we get in a constable that doesn't do his duty and the people are groaning under that kind of defalcation, I want to elect a new one and force the old one by law to go out of office at the expiration of two terms and force him to settle and pay over the money he owes those who entrusted him with their collections. I will try some other and will keep on trying until I get an honest constable.

MR. STUART of Doddridge. What will you do with him?

MR. DERING. Why, sir, he will likely turn out a good one. But if the gentleman from Doddridge has only got two men in his county fit to be constables, we can send him some over from Monongalia and will be happy to do it.

MR. SOPER. This, sir, is a very important office—as much so probably as any in the town, and I am ready to admit that the complaints that have been made by some of the gentlemen of the Convention here as to the improper conduct of constables not paying over moneys in their hands is too true. I attribute it, sir, in a great measure, to the laws on this subject. I think the remedy rests with the legislature; and now I will suggest what my own view on this subject is. I will state, in the first instance, the best constable I ever knew in my life was a man who continued in the office, to my knowledge, some fifteen years. To start with, he was an honest man; and in the next place, he was a temperate man; and in the next place, when he got the money he collected he would hardly seem satisfied until he paid it over either to the justice or to the plaintiff.

In the new State, if we should be so fortunate as to get a constable of that description, I submit to the Convention whether he should ever be removed so long as he was willing to hold the place. It appears to me we would all be glad to retain him.

Now, where is the defect in the law? It is this, sir. As the law now stands your constable gives a bond with sureties in the penalty of $2000; and you have no clause in your statute by which you can bring an action before the magistrate on the condition of that bond to compel him to pay over the sum of money. You are bound to go into court to collect it. The way in which business has been conducted in these courts, it will take perhaps a year before you can get your trial or judgment. A man who has say $250 in the hands of a constable does not wish to incur such an expense. My course would be to call on the legislature, in the first

place, to alter the shape in which the surety should be given. I would have it a simple undertaking in writing by which the constable and his surety would obligate themselves to pay over to every individual such sums of money as the constable from time to time should become liable to pay. That instrument, sir, I would have filed in the town clerk's office, upon which if the constable collected any money within the jurisdiction of a justice and did not pay it over at the return day of the execution, the plaintiff could go immediately before a magistrate and bring a suit against him and his sureties; and in the due course of six or twelve days, or whatever the time that should be fixed, you would be able to get your judgment. That would be one remedy. I would go still further, sir. Now, sir, it is the law—or ought to be—that when an execution issues it is to be returnable to the magistrate in a certain number of days. I would add to that that the constable should return that execution within five days after the expiration of the return day to the magistrate. He should return it either levied on property, return it if he wanted property, or return it the money in hand. I should compel him to make one of these returns. If he refused to make the return or if he returned he had the money in hand and did not pay it, I would then authorize the party or any individual to make application to one or two magistrates to take away from him his office in case the money was not paid over within ten days.

If the legislature would pass laws such as I have suggested you would hear none of these complaints against improper constables. If the constable knew that it was in the power of the party to remove him from his office for neglect to pay over within ten days after he received the notice he would do it if he wanted to retain the office, and, if he did not, his office would be taken from him and the magistrate who did it would appoint his successor until the next annual election came around. And furthermore the money would be recovered from his securities. I think with proper legislation on this subject the motion of the gentleman from Doddridge a beneficial one.

The question on striking out was put and the motion was agreed to, the yeas and nays, on motion of Mr. Lamb, being recorded as follows:

YEAS—Messrs. John Hall (President), Brown of Preston, Brooks, Battelle, Haymond, Harrison, Hubbs, Irvine, McCutchen,

Parsons, Parker, Robinson, Stevenson of Wood, Stephenson of Clay, Stuart of Doddridge, Soper, Taylor, Wilson—18.

NAYS—Messrs. Chapman, Dering, Dille, Hansley, Hall of Marion, Hagar, Lamb, Powell, Paxton, Sinsel, Simmons, Stewart of Wirt, Van Winkle, Walker, Warder—15.

MR. VAN WINKLE. Well, sir, the question recurs on this whole sentence, I suppose, as amended.

THE PRESIDENT. The question is on the adoption of the sentence as amended.

The vote was taken and the amended sentence adopted.

MR. VAN WINKLE. I move the adoption, sir, of the remaining sentence of this section, with the simple remark that in providing that the supervisor shall preside at this meeting there was something more intended than to provide a person to do it. It was that through his connection with the county board he would be able to give the town meeting such information as they would unquestionably require.

The remaining portion of the section, which was as follows:

"The supervisor, or in his absence a voter chosen by those present, shall preside at all township meetings and elections, and the clerk shall act as clerk thereof."

was then adopted, as was also the section as a whole.

MR. VAN WINKLE. Well, sir, I propose to take up the following section by sentences.

The Secretary reported the first sentence of the 3rd section as follows:

"The supervisors chosen in the townships of each county shall constitute a board, to be known as "the supervisors of the county of....," by which name they may sue and be sued and make and use a common seal, and enact ordinances and by-laws."

MR. VAN WINKLE. It may be only necessary to say that the object is the same as in reference to the townships, to make them, as it were, a quasi corporation, a corporation for such purposes as it is necessary that they can sue and be sued and can act by their common name by ordinance and by-laws.

MR. PARKER. It seems to me that an amendment something like this would be desirable: "not inconsistent with the Federal or state Constitution."

MR. VAN WINKLE. It is certainly unnecessary, because if they did such a thing it would be a dead-letter. There can be no objection, except that it is unnecessary.

MR. PARKER. The only difficulty is that this is a fundamental provision. This is the fundamental law. If the legislature should pass a law in contradiction to the Constitution, of course it would be a dead-letter. Otherwise, we clothe the supervisors in the fundamental law with power to enact such ordinances and by-laws as they see fit; and being a part of the fundamental law, they could not be controlled: enact ordinances and by laws "not inconsistent with the provisions of this or the Federal Constitution." I would add likewise this: "or the law of the land." What I mean is that the by-laws and ordinances that this board may pass shall be in conformity with this Constitution, with Federal Constitution and also with the general laws of the land.

MR. LAMB. I would suggest to the gentleman this is certainly unnecessary, to say that it shall not be inconsistent with the Constitution of the United States. We cannot authorize anything to be done that is not consistent with that Constitution; nor is it necessary to say that they should not be inconsistent with our Constitution. That is necessarily implied. But I am not sure that it may not be necessary to say that they shall not be inconsistent with the laws of the State. This is a constitutional provision authorizing them to make ordinances and by-laws without limitation. The same Constitution which gives legislative power to the legislature gives a legislative power to this board. It may be necessary to imply in some way that these laws shall be subordinate to the general laws.

MR. PARKER. I should differ with the gentleman from Ohio. It would strike me that the acts and ordinances of the supervisors under this section would be limited by this Constitution. So far as the Federal Constitution is concerned I admit that all the acts of this Convention or acts of the legislature or board of supervisors, all of them are in subjection to the Federal Constitution. But if the fundamental law authorized a certain body to go on and pass its acts and its ordinances without any limitation, why I do not see where we find anything in the same instrument having any

higher power, because no part of this Constitution has any higher power than this clause. This clause clothes this body with power to pass these laws and ordinances without any limitation whatever. Seems to me this clause clothes the board of supervisors with a power without any limit or stint, to nullify and over-ride any clause in this Constitution. What limits them? Is there anything in it that goes to show they shall go so and so or pass such and such ordinances, provided they do not conflict with other provisions of this Constitution? Nothing of that kind. It is without any limitation whatever. Well, now, this clause conferring this power is just as fundamental and controlling as any other part of the Constitution. Therefore it does thus confer on the board of supervisors a certain power extend to over-riding, repealing, altering any other provisions that the Convention has seen fit to put in this Constitution? That certainly cannot be the meaning. It must be that their acts and ordinances are to be within this Constitution.

MR. VAN WINKLE. It seems to me it is preposterous to suppose that any court of justice—for that is where the question must go for decision—if it ever is decided—would deliberately pronounce that a body could go contrary to the very instrument that created it? Now, sir, I cannot see that there is any judge in this State, or elsewhere, that would come to any such conclusion. The clause the gentleman speaks of is frequently introduced. For instance, a railroad is authorizing its board of directors to make by-laws, rules and regulations. There they may very properly say they are authorized to pass the necessary regulations and by-laws not in conflict with the Constitution of the State or the Constitution of the United States. The idea is that this is done to save themselves from the consequences of any illegal or unconstitutional acts by that board. But here in the very instrument that gives them power, it is preposterous to suppose that anything could justify them in acting contrary to that very instrument. When they are appealed to, when any of their acts is questioned, to know by what authority they are acting, they must produce this very Constitution as the only thing that gives them that right; and then how would it do to say, we admit your Constitution to be binding so far as it authorizes us to do anything but we deny its binding force on us in other respects? The mere statement of the case in that way shows that this amendment cannot be necessary. It certainly would not do any harm, but I am very much opposed to introducing unnecessary words into the Constitution.

The vote was taken on Mr. Parker's amendment, and it was rejected.

MR. VAN WINKLE. Well, sir, if no amendments are offered, I will move the adoption of the first clause.

The vote was taken and the clause adopted.

The Secretary reported the second clause:

"They shall transact the business of their county in legislative form, for which purpose they shall meet statedly at least four times in each year at the court house of their county, and may hold special and adjourned meetings."

MR. LAMB. Mr. President, I would prefer the words "in legislative form" omitted. We will have a board of supervisors in some counties consisting of three members. How are they to transact business in legislative form?

MR. VAN WINKLE. I do not think, sir, the clause is liable to the objection of the gentleman. It does not mean to say they shall have all the instruments of legislation this body has. I do not think it implies anything more than that they are to proceed by discussion, deliberation and vote. You have provided elsewhere that at their meetings one of them must preside. Then again they must have a clerk to record their proceedings. I do not think the words imply such as the gentleman thinks they do. If they did, they might be objectionable. The town council of Parkersburg is composed of seven members. They transact their business around a table—not as we do—and discuss it; and when it comes to a vote, they vote on it. So with the boards of banks, etc., that I have been connected with. The president sits at the head of the table and the members sit alongside. These formalities are not what is meant—that a member shall rise and address the Chair, for instance before speaking. The votes are taken regularly and are recorded regularly.

I must insist, then, that the gentleman has been unfortunate in his selection of words. This thing of transacting business "in legislative form" does not mean that members shall sit round a table and talk over business. The word used is "form." It is the forms of legislative bodies that are to regulate business. What are those forms? Your rules of order, your calling ayes and noes, etc. These are the forms. The discussions that take place in a legislative body are not the forms in which the business is

transacted. If the gentleman means nothing more than that they shall meet and discuss their business, talk over their business, and come to a conclusion by a vote, the terms used here, it strikes me, are very unfortunate. The words "legislative forms" imply, I take it, the adoption of rules of order, the enforcement of these rules, the calling of ayes and noes, and all this. It is not the substance but the form; not the free discussion that takes place in legislative bodies that are included in this expression but the forms which regulate their proceedings.

THE PRESIDENT. Did the gentleman from Ohio offer any amendment?

MR. LAMB. I move to strike out the words "in legislative form."

MR. PAXTON. I would suggest, in order to accomplish what my colleague appears to desire, that after the words "They shall" all be stricken out down to the word "meet" in the 28th line, so it would read: "They shall meet statedly etc."

MR. LAMB. I accept that as a decided improvement on my own suggestion.

The amendment was adopted, and the Secretary reported the clause as amended: "They shall meet statedly at least four times in each year at the court house of their county, and may hold special and adjourned meetings."

MR. HAYMOND. I move to strike out "four times" and insert "twice."

MR. VAN WINKLE. Mr. President, if these wants of roads and bridges, and things of that kind, and licenses, and many other things which will be confided to them are to have attention when needed, it would seem to me they would require more than two meetings in a year. That would be only every six months. Now, if they meet four times, at intervals of three months, it seems to me it would better answer and suit the business of the people. If they met but twice a year they would have so much business to transact, the public business would be impeded and delayed. If they met four times, it could be dispatched in a shorter time, with more facility. Nothing would be saved by the longer interval, while the public affairs of the county would be delayed and the people inconvenienced.

MR. HAYMOND. If it can be done at two meetings, I much prefer it. The people in the country are tired of so many meetings, and courts, and all these things. We wish to cut everything down. I would prefer to very much myself.

The amendment was rejected; and the question recurring on the clause, it was adopted.

The Secretary reported the succeeding sentence:

"At their first meeting after the annual township election, and whenever a vacancy may occur they shall elect one of their number president of the board, and appoint a clerk of the county whose compensation they shall fix by ordinance and pay from the county treasury, who shall keep a journal of their proceedings and transact such other business pertaining to his office as may be by them or by law required."

THE PRESIDENT. The question is on the adoption of the concluding clause of the 3rd section.

MR. STUART of Doddridge. I move to strike out all after the word "Board" in the 33rd line, so that the board should not have the fixing of the compensation. It may be a matter of favor. They can make it large or small. When fixed by the legislature the party elected to the clerkship will know what he is going to get and the people will know what they are going to pay.

MR. VAN WINKLE. This clerk, sir, is not to be the clerk of courts and his duties will be very circumscribed, and his compensation will be very small.

MR. STUART of Doddridge. How do you know?

MR. VAN WINKLE. His services will vary in every county according to its size. But I apprehend there will be as much honesty in these boards of supervisors as there will be in the legislature (Laughter). The idea of a body of that kind seems to include that of a clerk—somebody who can not only keep their minutes but can give certificates of their acts, which will be constantly necessary. Extracts from their records must frequently be furnished, and they must be signed or certified by a clerk under the seal of the county. The officer, I think is an absolutely necessary one; and as his duties will be so different in different counties, it was thought by the committee that the boards of supervisors were the proper parties to fix it. I do not apprehend that as a general rule, unless some other duties are thrown upon them, that the compen-

sation of any of these clerks would exceed perhaps one hundred dollars a year. He has of course to take charge of records and make these prescripts to parties who need them, and to that there might be a fee attached. But his principal duties would be to attend the meetings of the board and keep a record of their proceedings, which shall be an official record signed by the presiding officer, and from which extracts could be furnished as required. There may be other matters, as I have already observed, which may be thrown on this officer; and those matters, whatever they might be, vary considerably in the different counties. It would be impossible for a general law of the legislature to fix anything more about it than to fix certain limits within which it might be granted. Now, take any of the small counties—leaving out Ohio—take Harrison or Kanawha, either of them having 12,000 or 13,000 inhabitants; or compare with those that have less than 2,000, and then the intermediate—it would be impossible to fix any general rule for the clerk's compensation, I think. My impression is, sir, that it is perfectly safe to trust to the board of supervisors of the county, as it comes out of the county treasury and out of their pockets as well as the pockets of the other citizens and tax-payers, that they are in every respect the best body to fix this compensation. They are the best possible judges in each case what the services are worth. Who else can have any such intimate and precise knowledge of the duties, and who else can so well regulate that compensation as it should be regulated? I hope, sir, this clause will be retained; for I think that striking out the office would be almost to strike out the board itself in the character of a board.

MR. SOPER. I move to amend the motion, sir, by striking out only the words "of the county," so as to read that the board shall appoint a clerk, etc. Now, the provision that the board shall "appoint a clerk of the county" has doubtless made the impression on some that it means an officer similar to the one we now have, known as the "county clerk." It is something entirely different. It is a clerk to this board of supervisors. The clerk should have nothing to do except to record the proceedings of this board, and to do such things as will be necessary to carry out whatever the board may order. The principal labor of this clerk under the direction of the board will be in preparing the tax lists and collector's returns. That will be the greatest duty he will have to perform—the most laborious. I do not know what the views of the Convention will be as to as who should collect your taxes. If the taxes of

the county are to be collected in the township by a township officer, why then the duties of these instruments will be equivalent to those of the townships. If, however, the taxes are to be collected by the sheriff, then the duty will be simple. Now it is impossible for this board to transact its business without they have a clerk to keep a record of its proceedings and give the necessary certificates and extracts which may be required by parties in the various duties they will have to perform; and no one set of men so well as the supervisors themselves will know how to put an estimate of the values of the services of this clerk. I suppose the services of the clerk will probably range from $50 to $100 in a county. I think they will not be more than that. As has been remarked already, it will be impossible for the legislature to fix the amount that he is to receive for his services, because it will vary so much in the different counties, and the legislature can only pass general laws which shall be applicable to all counties; whereas, if we leave it to the legislature the clerk in one county would receive probably four or five times as much as the clerk in another county. I believe it is the safe way if we let this board of supervisors to transact the business of the county appoint and fix the pay of their clerk. I therefore move, sir, as an amendment to strike out the words "of the county." I think that would disabuse the public mind of the impression that we are here giving this board the right to appoint what is now known as the county clerk.

MR. HALL of Marion. I cannot move an amendment but I wish to make a suggestion which will be in point when I say that I am opposed to both amendments for this reason: I have not looked at this report with that care that would enable me to make suggestions on many parts of it; but in looking to the 5th section where it is provided that we shall have a recorder of deeds and wills that in preference to the amendments proposed here I should like to see that officer made the clerk of the board. He will be an officer elected, who will be the keeper of the records at the proper place and could keep all the records of the proceedings of this other body. He is likely to be a very competent man for it, and in connection with that he could afford to do it for a less compensation than any one so similarly situated. I cannot move that as an amendment. I trust it may be the pleasure of the Convention to vote down these amendments to permit the offering of an amendment providing that the recorder of deeds and wills, to be elected by the county, shall be the clerk of the board and shall receive such compensation as the board shall determine.

MR. STUART of Doddridge. I hope the gentleman will not vote against the amendment, because my object in striking this out is exactly that we may insert exactly what the gentleman has indicated.

MR. HALL of Marion. You strike out too much.

MR. STUART of Doddridge. The object of my motion to strike out is not that this board should not have a clerk, but that it be inserted there and made the duty of that clerk to preside over the meetings of these boards. I must take issue with the gentleman from Wood when he said in all probability these boards would be as honorable a body as the legislature. I think the legislature is a very honorable body, and it would be very hard, indeed, to find a body more so.

MR. VAN WINKLE. The word I used was "honest". I have no doubt the legislature are the most honorable body that may be elected; I think the supervisors would be equally so. I was only raising the one, not lowering the other.

MR. STUART of Doddridge. Of course, the gentleman understands I was only joking. We will take them on the ground that they are equally as honest. This clerk is to be appointed by the board of supervisors themselves. It may be an appointment of a son, a friend of some member of the board; and it always will be; and they will be inclined to give a compensation to this clerk which he ought not to have. Where the legislature had no motive, they would be apt to fix the salary without knowing who is to get it; but this board fixes the salary after they know who gets the appointment and is to receive it. Now, that is my fear in this matter. I do not want to detain the body, because I must admit that I am not very well posted on these propositions; not half so well as my friend from Tyler; for he knows all about it and I don't know anything about it. I am willing to admit frankly; but I want to throw around this provision, if we adopt it, as many safeguards as possible. Does the board fix its own compensation? No, sir; that is fixed by the legislature. Well, sir, how does the legislature know how to fix their compensation any better than how to fix that of their clerk? They know just as well how to fix the pay of the clerk if it is to be so much per day. Because it will be like it used to be in appointing commissioners. Justices of the peace had the right to appoint commissioners. Well, they always appointed their sons; and until there was a special act of the legislature

to prevent that it was invariably the case. So will be the case with these supervisors; will appoint some particular friend; and they will do it as "honest" as possible.

MR. LAMB. As well as I can understand, the plan here, this clerk is a very small office; it is a very subordinate position. We are likely to be misled in this matter by the expression "clerk of the county" which is suggested by the gentleman from Tyler. He does not occupy that position at all, according to my understanding. He is merely a clerk to record the proceedings of the board of supervisors and give extracts from that record when it may be necessary, and perhaps to do some other small services which may be specially ordered by the board. Now, if this board of supervisors is to be a deliberative body, why every deliberative body under the sun appoints its own clerk. If this is to be a clerk of the county, or a county clerk—such an officer as we have been accustomed to apply those terms to—of course, let him be elected by the people. But if he is simply a clerk to keep a record of the transactions of a deliberative body, who ever heard it suggested that a deliberative body was not to appoint a clerk to record their own transactions? In so small an office, I would not trouble, I believe, with electing him. If I can see into the plan here, the compensation of this officer must be exceedingly small. His duties will be necessarily of that character that the board of supervisors are the proper persons to appoint them.

MR. SOPER. A single word in relation to this matter, sir. The clerk of this court (board?) will probably reside at the county seat. The meeting of the supervisors will be in the court house. Their proceedings will be kept in the clerk's office. It is usual to employ one of the deputies in the clerk's office to attend on the business of the board of supervisors. It doesn't follow that it is necessary to have him. It requires a person who can write a plain speedy hand, and it requires a man who is expert in figures. These are requisites almost absolutely necessary and will be here in counties of Virginia, I apprehend, almost indispensable; and it is probable that it will be some active young man at the county seat or some deputy in the clerk's office who will perform this duty. The labor of it will be very little except during the session of the board of supervisors and probably for a day or two afterwards, and the compensation will be light. That is all, sir, that I wish to remark on the subject.

MR. PARKER. Only one word. It strikes me we are getting too many clerks. For instance, here is to be a clerk of the circuit court; here is to be a clerk of the board of supervisors; here is to be a recorder of deeds and wills. These are all to go into one office. That is, in our county, and in a good many, I suppose. It would seem some of these ought to be consolidated; highly important it should be so. County commissioners in states where I have known the duties that devolve on these supervisors to be performed by what are styled county commissioners. The clerk of the courts always and uniformly acts as the clerk of the county commissioners. Always. Now it seems to me that the clerk of the circuit court—we have got to have a clerk, of course, of the circuit court—also of this body; or else the recorder of deed and wills should act as the clerk of this board. Otherwise, it seems to me—I know it would in Cabell; I believe it would in most of the counties, particularly the small ones where they have but one office. Our county clerk has done all this business heretofore, and to have a deputy for this board, because they will have some very important business to come up. To catch up a mere scribe and put him in clerk over the books of the county in the clerk's office, why it seems to me it is too important a business to be entrusted in that way. It would strike me that the clerk of the circuit court and the clerk of the supervisors should be the same person having charge of the records. The business in a great measure will be judicial as well as that of the circuit court.

MR. VAN WINKLE. I would like to know what would be the operation of this thing. The gentleman from Doddridge moves to strike out certain words; the gentleman from Tyler moves as a substitute, perhaps, or amendment, to strike out only the three words "of the county". Then if the amendment of the gentleman from Tyler is adopted the amendment of the gentleman from Doddridge is lost. Will that be the effect?

THE PRESIDING OFFICER (Hall of Marion). I do not so understand. One proposes to strike out all after the word "board."

MR. VAN WINKLE. The gentleman from Doddridge proposes to strike out all and the gentleman from Tyler a part. In order that we may vote understandingly there is a way: that portion like that is proposed to be stricken out the friends are allowed to amend before the vote is taken if they can on the vote to strike out. Then the vote on the motion of the gentleman from Tyler can be taken, and if that fails the vote will be taken on the other one.

THE PRESIDING OFFICER. That is the understanding of the Chair. I think it is competent to vote to strike out the words proposed in the amendment of the gentleman from Tyler, and then to vote on the motion of the gentleman from Doddridge to strike out all.

MR. LAMB. I would suggest to the gentleman to call for a division of the question—first, on striking out the words "of the county", and then on striking out the balance or the whole as the case may be.

MR. VAN WINKLE. To cut the Gordian knot and have an understanding; that the vote on the proposition of the gentleman from Tyler will only affect the proposition of the gentleman from Doddridge so far as concerns making the clerk a clerk of the county. If the county feature is eliminated, then the motion of the gentleman from Doddridge will strike out the remainder of the provision for a clerk so that no clerk shall be provided for at all. If the Convention votes to retain the county, then the motion of the member from Doddridge will be to strike out the clerk altogether.

The vote was taken on Mr. Soper's motion and it was agreed to.

The question recurred on Mr. Stuart's motion to strike out the whole provision in regard to the clerk.

MR. SOPER. Some gentlemen have intimated that they favor the suggestion to confer this duty on the recorder of deeds or the clerk of the circuit court. Now, sir, the compensation which the board of supervisors will fix for this office will be far less than what the legislature will give the clerk of the circuit court for services. If you take the compensation to be given to the recorder of deeds, it will be what we generally know as "by the folio," so much for a word or so many cents for the hundred words. There are two objections to having that ratio of compensation to the clerk of the board of supervisors. In the first place, it would induce the clerk in drawing up the ordinances to lengthen them very much instead of condensing them. In the next place, the compensation which is allowed to the circuit court officer or for the recording of deeds, wills, etc., is a larger sum than the board of supervisors would be willing to allow their clerk. I have always seen it operate in that way, so that I am satisfied that the true

course for the Convention to pursue is to permit this board to appoint a clerk to record its proceedings irrespective of the circuit clerk or the recorder of deeds and wills. And I will say again to gentlemen that we have not adopted here the office of recorder of deeds and wills separate and distinct from an officer which we know as the county clerk. We have not adopted that section yet. It will be time enough to speak of the duties of the recorder when this Convention shall have provided for one. We had better take this section now before us and adopt it as it reads. After we get through, if we have a recorder or other officers we can then reconsider it and make a change. But I apprehend at present, sir, there is no such individual as recorder of deeds in the county. I do not know that there is such an individual as a county clerk or circuit court clerk. We have not got them yet. And therefore I am for giving the power to this board to appoint its clerk and fix his compensation. Now, I make another general remark: if there is any fault attached to this board, it will be the fault of penuriousness, because their transactions in the towns where they reside will be to lessen the taxes put on the county. In a board of supervisors that I knew in New York were some of the most honorable and reputable men in the county; yet I have known them in this board when they came to sit there as auditing charges against the county and fixing the amount of taxes to be levied on their respective towns and county that they have been not only rigid but actually penurious. So that gentlemen need not apprehend that they are going to select a favorite and give him an exorbitant compensation which is to be levied on their constituents in the shape of taxes. No fear need be apprehended of anything out of what any reasonable man would consider a fair ordinary compensation. I therefore hope the motion of the gentleman from Doddridge will not prevail.

MR. BROWN of Preston. I trust the motion of the gentleman from Doddridge will prevail; and I trust so, sir, on the ground that I think the fewer officers this Convention creates by its Constitution the more it will make the Constitution acceptable to the people. And I propose, in consideration of this fact if the amendment of the gentleman from Doddridge shall prevail to insert the following words: "And the recorder of deeds and wills for the county shall be clerk of the board of supervisors, who shall fix his compensation, which shall be paid out of the county treasury;" so that if his amendment shall prevail and mine should also be adopted the section would read in this way:

"At their first meeting after the annual township election, and whenever a vacancy may occur, they shall elect one of their number president of the board, and the recorder of deeds and wills for the county shall be clerk of the board of supervisors, who shall fix his compensation, which shall be paid out of the county treasury."

MR. VAN WINKLE. I would like to say that "sufficient unto the day is the evil thereof." I wish to express my dislike of this mixing up of public offices—one man discharging the functions of two officers. I do not know until we get to the recorder of wills and deeds, perhaps we will not know until the legislature acts on his case, what are to be the precise functions of that officer. If he is to record all the deeds of the county, as I suppose is what is intended, he will have his own compensation and be paid by parties who have their deeds recorded; and certainly there is nothing to be gained or saved by making him also the clerk of the board of supervisors. I understand the proposed amendment of the gentleman from Preston to mean his compensation as clerk only is to be fixed by the board of supervisors, not his compensation as recorder. It strikes me there is nothing gained. There may be nothing to prevent the board of supervisors appointing the individual who happens to hold the office of recorder, or perhaps some other county officer; but yet he will not be the clerk of the board in consequence of being the recorder, not that in consequence of being clerk. I believe the amendment is not now proposed and I will say no more on the subject at present.

The vote was taken on the amendment proposed by Mr. Stuart of Doddridge and it was rejected.

The question recurring on the sentence as reported by the committee, it was agreed to; as was also the entire section.

Section four was next taken up and reported by the Secretary as follows:

"4. The board of supervisors of each county, a majority of whom shall be a quorum, shall, under such general regulations as may be prescribed by law, have the superintendence and administration of the internal affairs and fiscal concerns of their county, including the establishment and regulation of roads, public landings, ferries, and mills, the granting of ordinary and other licenses, and the laying, collecting and disbursement of the county levies; but all writs of *ad quod damnum* shall issue from the circuit courts. They shall from time to time appoint the places for holding elections in the several townships of their county, and shall be the

judges of the election, qualification and return of their own members and of all county and township officers."

MR. VAN WINKLE. As all these functions here enumerated have to be discharged and as there is no other body that can discharge them, it might seem to be superfluous to say anything in favor of this section in this shape. But I would like the indulgence of the Convention to read a few lines that I hold in my hand which I intended to read yesterday morning. They were resolutions that were offered by the late Judge Summers, whom I suppose there are many gentlemen in this Convention acquainted with. To those who are not, sir, I may say that as a judge, as a citizen, in every relation of life, he was a man of the most exalted character. I can say also from personal knowledge derived from my connection with him as his commissioner for the sale of delinquent and forfeited lands, that there could be no man who had a deeper or a more active interest in all that related to this section of the state. In reference to that very law—the selling of the delinquent lands under proceedings in chancery—he took a very great interest, and I know from the particularity with which he supervised my proceedings the deep interest he felt in having all carried out in such way as would tend to quiet, as it did quiet, the land titles of this section of the state. There is no greater evil under which we have suffered than that very one in relation to our land titles. He was a man of calm judgment, and, even at the time of the convention of 1830, of mature judgment; a man who had practised long at the bar and had concerned himself in the county administration and knew it in all its features and provisions. And he, following the lead of Mr. Jefferson, proposed a similar county organization to that which Mr. Jefferson had previously proposed, in the convention of 1830; and you will observe some language in this section defining the duties of this board of supervisors—the powers and duties—almost identical with the language used by Judge Summers. He proposed that each county ought to be divided into "wards."

Mr. Van Winkle then read the following:

"Resolved, That each county ought to be divided into wards, so that there shall be not less than three nor more than seven in any one county.

"That there ought to be elected in each ward by the voters qualified to vote for members of the house of delegates one commissioner, and that the commisioners elected in the several wards ought to form a board of police for their respective counties.

"That the commissioners of police ought to go out of office one at the end of each year, to be determined in the first instance by lot; and that successors ought to be elected by their respective wards and serve for a number of years equal to the number of commissioners in each county, so that one commissioner of police may be chosen in each county at every annual election.

"That the boards of police ought to be charged with the superintendence and direction of the fiscal concerns of their respective counties, with power to assess, levy and cause to be collected all local, county or ward taxes and to direct the disbursement of the same; to superintend all provisions and expenditures for the support of the poor; and that the opening, preserving and improving of the public roads and other highways, with the construction of bridges and other public structures ought to be confided to the boards of police.

"That it ought to be the duty of the several boards of police, from time to time or whenever required by the Governor, to recommend to him suitable persons to fill the offices of justice of the peace, and to make any other recommendations and perform such other duties as may be required by law.

"That the proceedings of the several boards of police ought to be recorded and preserved by such officer as the general assembly shall designate, and that the commissioners ought to receive a moderate compensation for their services, to be ascertained by law and paid out of the county funds.

"That each commissioner of police ought to be a conservator of the peace within his county, and if holding no office or employment incompatible with the justice of the peace ought to be included in the commission of peace."

MR. VAN WINKLE. That, sir, to those who knew Judge Summers as I did, and who knew his reputation, I apprehend would be a stronger argument in favor of the contents of this section than anything I can say.

MR. STEVENSON of Wood. I only rise to ask for a little information, because I confess I do not exactly understand the business that is laid out for this board of supervisors. It is in reference simply to one word: They shall have "the superintendence" of the internal affairs, including the regulation of roads, public landings, ferries and mills. I suppose, of course, they have some control over them that is not specified or else it is understood they are going into the milling business, which I suppose is not the case.

MR. VAN WINKLE. A mill is erected generally on a water course that is owned on one side by one man and on the other side by another. The law as it stands at present authorizes the con-

demnation of an acre of ground on the opposite side, which must be done by a writ of *ad quod damnum*; but there must be somebody to say whether the strip shall be allowed to be bisected by a dam and prescribe the conditions under which it shall be erected. In other countries, I believe it is required that it shall be so erected that it shall not prevent fish going up. But there are other things of that kind such as would be found in our present laws in relation to mills which are usually decided by the county court as to the propriety of the erection of mills, as to the height of the dam and many other circumstances which will readily suggest themselves which the legislative body of the county are the proper persons to decide. There will be those who are opposed to it living higher on the stream, whose lands will perhaps be overflowed or may be in danger of being overflowed or otherwise injured, or who procure their living by the navigation of the stream by boats or otherwise. These will make their objections before this board; who after hearing everybody on all sides of the question will decide in favor of the erection of the dam or against it. If they decide it is a proper place and the party does not own the land on both sides of the river, having got this authority he then goes into the court to have his writ of *ad quod damnum*. It is so with other things that will be confided to them. They are matters which will go to the private interest of individuals but in which the public at large or in the vicinity concerned and represented. These representatives of the people I think are the proper persons to judge whether the thing proposed is suitable, whether it will tend to promote or to injure the public interests. Well, again, I do not remember the provisions but mills are a subject which I believe is taken care of under most governments; that is, to provide the means of grinding for the bread of the people. Roads are established and many other things done concerning them. How far that might be confided to them will depend on the legislature. As to these questions affecting nobody but the people of the county, the county legislature will be the body to decide.

MR. HARRISON. The words "public buildings" is in the 43rd line of the section as printed, (Mr. Van Winkle, when the section was read by the Secretary had corrected some misprints, one of them being to change "buildings" to "landings." Reporter.) I think properly so. I do not see why the supervisors of the county should not have the control of the public buildings. It seems to me it is not necessary to send down to the legislature every time

we want to erect a court house and jail, or any other public building, and that there is no other authority under which it could be so well placed as under the supervisors.

MR. VAN WINKLE. Will the gentleman go back to the 40th and 41st lines? He will see the board is clothed with general powers to cover the internal and fiscal affairs of the county.

MR. HARRISON. Well, I am strongly inclined to think the rule mentioned by the gentleman from Ohio, *"expressio unias exclusio est alterius,"* might apply there.

MR. VAN WINKLE. The work "including" I think prevents the application of that maxim.

MR. HARRISON. Very well; I merely made the suggestion.

MR. BROWN of Kanawha. I would like to know what the question is.

THE PRESIDING OFFICER. It is on the first sentence of section four without amendment.

The sentence was agreed to; as was likewise the one following; and the section as a whole was adopted.

The Secretary reported the 5th section:

"5. The voters of every county shall on the day appointed for electing members of the legislature, whenever it may be necessary, elect one sheriff, one prosecuting attorney, one surveyor of lands, one recorder of deeds and wills, one or more assessors, one superintendent of schools, and such other county officers as the legislature may from time to time direct or authorize, the duties of all of whom shall be prescribed and defined by general laws. All the said county officers shall hold their offices for two years from the first day of October next succeeding their election, except the sheriff, whose term of office shall be three years. The same person shall not be elected sheriff for two consecutive full terms, nor shall the deputy of any sheriff be elected his successor; but the retiring sheriff shall finish all business remaining in his hands at the expiration of his term for which purpose his commission and official bond shall continue in force. The duties of all the said officers shall be discharged by the incumbents thereof in person or under their personal superintendence."

MR. BROWN of Kanawha. I will move to strike out the word "one" where it occurs so frequently and say "a".

The motion was agreed to.

MR. PARKER. Mr. President, I would move to strike out in the 53rd line "one prosecuting attorney." It seems to me it is not necessary for our small state with few inhabitants and not a great deal of money to be to the expense of having forty-four prosecuting attorneys. I believe it is doubtful whether there is that number left in the State. In a great many counties I know—and I believe gentlemen will bear me out, the great majority of them have left to engage in the rebellion. It seems to me as the State is to be divided into nine judicial circuits, with nine circuit judges, that the duties pertaining to that office can be more economically and more satisfactorily discharged by district attorneys, one for each circuit; to follow the judge as he goes around the circuit; and it will constitute the greater portion of his business and pay him a fair salary for his work. I know within the limits of my experience a district attorney that had some 200,000 or something rising that of inhabitants in his district—some five or six large cities with a great deal of criminal business to transact, found no difficulty in taking care of the commonwealth with all that various people. It seems to me, Mr. President, it would be a matter of economy, and in the present state of our country, it is impossible in some counties to find a lawyer. If on the other hand, in the election of nine competent gentlemen, I should choose to elect them in the first place on a general ticket so as we know we can get true men if we have to go into many counties. I believe in my own there is none or they are "secesh." Where we can get true men that can uphold the law and our new State when we get it into operation. Can go to these "secesh" counties carrying nothing with them but the dignity of the law and a judge equally unprejudiced and untrammeled and loyal, they can enforce the law, the majesty of the law, and the power of the new State there and make them feel it. But, on the contrary, if we are to select our officers that are to represent the new State from among a people that are certainly very uncertain on that question, who have been open secessionists, though now they may say they are "Union," on the lip but very questionable at the core —now, I say we have a large section of our new State which is to be of that kind. To take this government and put it into their hands, and where is it? It is a Jeff Davis government; a Jeff Davis reign, and not West Virginia's. Well, now, much of it—a good deal of it—in the Southwest, the only way we can for the present meet this antagonistic element is to elect not only prosecuting attorneys that shall help the commonwealth and the judges also, for the present, until this difficulty is cured; until loyalty is established

throughout the State. Then we provide here that by act of the legislature the election of both the judge and the prosecuting attorney should be within the districts.

MR. BROWN of Kanawha. Mr. President, I find myself constrained to differ with the gentleman from Cabell. I first understood his argument as rather against having a prosecuting attorney at all; but a prosecuting attorney—a good one—is to be a county court, justice, clerk, adviser general. He is consulted on almost all subjects by almost everybody; and if he is a worthless one then I confess the country is without a very excellent spoke in the wheel. To get a good one is therefore a very high consideration. That a good one may be very often got by the mode proposed by the gentleman from Cabell I believe to be true, by having them appointed and let them circulate around the circuit with the court. That was the old plan in Virginia. I believe when I first came to the bar that was the plan. I remember hearing the lawyers speak of it, anyhow, that the judge and prosecuting attorney started on the circuit together; and it was almost always an able lawyer who was the prosecuting attorney; that he traveled from county to county and prosecuted pleas for the state. But there was a manifest defect in it. While he would be an able lawyer, the lawyer was deficient in that very important item that he knew nothing about the case until he got to the court house. The preliminary business was done in the county before the court arrived there—was all either wrongly done or not done at all. In other words, without the presence of the prosecuting attorney in the county to give advice to the people and officers of the county as to how to conduct public matters and then prepare everything for the circuit it comes, is to have everything either undone or not done. Consequently, when a good attorney came on to prosecute any case, it would be almost certain to go out of court for some defect started before the court got there. One of the very excellencies of a prosecuting attorney is his presence in the county. The people know he is the public officer, the representative of the government, and they go to him as an impartial adviser. They go because the advice is given gratuitously, for it is not advice to them personally but it is advice to direct them in the discharge of some duty. He thus becomes an instructor of the whole community in the law of the land; and proverbially, wherever you have an able, honest, efficient, trustworthy prosecuting attorney you have a community that is reliable. It is a high consideration, then, to obtain such an officer in the

county. I will admit, with the gentleman that the difficulties of the present circumstances are greater in obtaining such officers now than in ordinary times; but here you are shaping your Constitution for all time to come. The fact of their being located in the county will induce competent men to go into the county and settle. I therefore must earnestly oppose this change in the provision in regard to the prosecuting attorney.

MR. VAN WINKLE. Mr. President, it will be observed in reference to the prosecuting attorney that the committee have done no more than to provide for his election, presuming his duties will be prescribed by the report of the Committee on the Judiciary. I should, at first blush, be in favor of the proposition of the gentleman from Cabell, but there are, as has already been shown, practical difficulties in carrying it out. It would require you to give an attorney for the commonwealth such a compensation that he could live on it; because his time would be nearly as much occupied as that of the judge. There is nothing, so far as we have got—and if I recollect right, there is nothing in the report of the Committee on the Judiciary—to prevent the prosecuting attorney from residing in a different county from that for which he was elected prosecutor. That exception was made on account of the difficulty suggested—that there is not in every county of the State a resident lawyer capable of discharging the duties of that office. But all these matters will be settled when we come to the report of the Committee on the Judiciary. At present, it is only to fix, so far the prosecuting attorney is concerned, the time of his election, who elects him, and his term of office. That is all that concerns us with him here. I should, with some reluctance, perhaps, be compelled to vote against the motion of the gentleman from Cabell.

MR. BROWN of Kanawha. While it is true I do not propose it should be required in this Constitution that the prosecuting attorney should reside in the county, that object is fully provided for as it stands.

MR. VAN WINKLE. I did not mean to say that you said so. I was simply speaking of the rights of the people.

MR. BROWN of Kanawha. It is the election by the people of this attorney that prevents that very objection. The people will not elect a man out of the county if there is one in it unless there is some urgent necessity for that departure. But the moment that necessity ceases they will return to their own county. My own

experience is so, and I think it is a fact. All I ask is to give the election of prosecuting attorney to the people. They will not elect foreigners if there are competent residents.

The amendment was rejected; and the Convention adjourned.

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XXXIII. MONDAY, JANUARY 20, 1862.

The Convention assembled at the appointed hour.

Prayer by Rev. R. L. Brooks, a member of the Convention.

In absence of the President, Mr. Hall of Marion occupied the chair.

Journal read and approved.

The Chair stated the question as being on the 5th section of the report of the Committee on County Organization.

MR. VAN WINKLE. It would be proper to explain to this Convention what these offices are intended to be so far as the committee intended. What the sheriff and prosecuting attorney are, everybody knows. The surveyor of lands is the regular surveyor of the county for the purpose of surveying lands and so on; and then there is a surveyor of roads, in a previous section. There is a recorder of deeds and wills: that also explains itself; one or more assessors. That name was preferred by the committee to "commissioner of the revenue," which consists of four words and is rather a description than a name. "Assessor" is well understood, not only abroad but in Virginia. We have the officers who make the assessment of real-estate called assessors. Superintendent of schools also explains itself. I would say it would be best to have the same understanding about these officers as about the township officers, that the Convention may adopt or reject any of these names, and put in others if in the progress on the report it should be found necessary; that the report should always be considered open for that purpose until it is finally disposed of.

THE PRESIDING OFFICER. Under the rule under which we are acting the report would be subject to amendment on final action.

MR. VAN WINKLE. Well, I mean previous to final action; that we should not be excluded from putting in another officer if necessary.

MR. DILLE. In looking over this first clause of this 5th section, it struck my mind that there is something in the 54th line probably unnecessary. It may be that I am under a misapprehension: "a recorder of deeds and wills." I am inclined to the impression, upon a little reflection on this subject, that it would be better to strike out the words "deeds and wills" and say "a recorder." It seems to designate a little too particularly the duties of the office; whereas, the provision here, the latter part of the clause would seem to indicate that the powers and duties of these officers is to be fixed or prescribed by the legislature. Now, in thinking upon this subject, I have thought probably it would be necessary for this officer to have charge of estates, the recording of estates and everything pertaining to them. If so this expression here would seem to exclude the idea. By using the simple expression "recorder", then the legislature in its action under this section may direct or authorize the duties of that officer and define them by general laws. I think it would be better, and I move to strike out in line 54 the words "deeds and wills."

MR. VAN WINKLE. I would state that those words were introduced by the committee rather for the benefit of the Convention in order that they might understand what the committee meant rather than to retain them as the permanent name of the officer. A recorder is an officer that is well know elsewhere by the simple title, and it would soon get to be so here. I have no objection, therefore, to strike out the words; and I think there is a good deal in the suggestion that the legislature go a little further than we propose in reference to the recording of deeds and wills. Something of that kind might be done. It would relieve the circuit court very much; and as it is not the intention to continue this limitation here, it will be left to the legislature to consider that suggestion.

Mr. Dille's amendment was agreed to.

MR. STEVENSON of Wood. I believe, sir, that there ought to be an amendment in the 58th line. At least I will offer one to elicit an opinion from the Convention. To insert after the word "defined" the words "as far as practicable." The section will then read: "the duties of all of whom shall be defined, as far as practicable, by general laws." I offer this amendment, sir, for this reason, that although I believe the practice to be a correct one, and I am decidedly in favor of it, of regulating the duties of these different officers by general laws, yet I think it is possible in the

course of time—particularly as many of these are new offices—cases may arise where it will be, good and proper causes may arise, where it will be impossible to apply these general laws. Now, it is to meet such particular cases which may possibly arise that I think the words should be inserted. We do not know how these general laws will operate in every particular case; because it is impossible to see now, whatever foresight we may have, the different particular cases which may arise as we come to apply them to the duties of these officers in actual practice. If these words are not inserted, the duties of these officers must be prescribed only by general laws; and if a difficulty should arise in a particular case, or in a number of particular cases, where some special law would be needed, you would have no remedy. Now, sir, if you insert this provision, it seems to me it does no harm but it may do good if such cases should arise. Then you can have a special act for the purpose to meet the case or any number of cases. If such cases should not arise then it will be the duty of the legislature to apply the general law in all cases and you will have to apply it in all cases at all events if this is inserted unless some special contingency of this kind should arise—which is quite likely, I think.

MR. PARKER. I would suggest: "defined by law," whether that would not meet that suggestion.

MR. STEVENSON of Wood. I would like "general laws" to be in. I would like that to be the rule; the other the exception.

The motion on the amendment was put and it was found there was no quorum voting.

MR. BROWN of Kanawha. Mr. President, I would say to the Convention when the gentleman from Wood proposed this amendment it struck me as being objectionable; but after hearing his suggestion and that of the gentleman from Cabell, I have changed my mind and I think it is highly proper that it be inserted. It is very possible, it occurs to me that many cases might arise in which it would be very difficult perhaps by general law to provide for the case that might be required and that special legislation might cure, and that the power to give it ought to be had. Therefore, I would vote for it.

The vote was taken again and resulted: Ayes—15; Noes—11.

So the amendment was adopted; and the question recurring on the sentence as amended it was agreed to.

MR. LAMB. Mr. Chairman, I have a report to make from the Committee on the Legislative Department, which I move to have laid on the table and printed. Following is the report:

THIRD REPORT OF THE COMMITTEE ON THE LEGISLATIVE DEPARTMENT.

The committee having reconsidered so much of their report as relates to the number and apportionment of members of the legislature, recommend the adoption of the following provisions as part of the Constitution of the State, instead of the 2d, 3d, 4th, 5th, 6th, 7th, and 8th sections of the 2d report:

2. The senate shall be composed of eighteen, and the house of delegates of forty-seven members, subject to be increased according to the provisions hereinafter contained.

3. The term of office of senators shall be two years, and that of delegates one year—commencing, in each case, on the 4th day of July succeeding their election; except that the terms of the senators and delegates first elected shall commence twenty days after their election. The senators first elected shall divide themselves into two classes, one senator from every district being assigned to each class; and of these classes, the first to be designated by lot, in such manner as the senate may determine, shall hold their offices for one year, and the second for two years; so that, after the first election, one half of the senators shall be elected annually. Vacancies, in either branch shall be filled by election, for the unexpired term, in such manner as shall be prescribed by law.

4. For the election of senators, the State shall be divided into nine senatorial districts; which number shall not be diminished, but may be increased as hereinafter provided. Every district shall choose two senators. The districts shall be equal, as nearly as possible, in white population, according to the returns of the United States census. They shall be compact—formed of contiguous territory—and be bounded by county lines. After every census hereafter taken by authority of the United States, the legislature shall alter the senatorial districts, so far as may be necessary to make them conformable to the foregoing provisions.

5. The legislature may at any time, by law, divide any senatorial district, by county lines or otherwise, into two sections, which shall be equal, as nearly as possible, in white population. If such division be made, each of the sections shall elect one senator, instead of the district electing two; and the senators so to be elected shall be classified in such manner as the senate may determine.

6. Until the senatorial districts be altered by the legislature after the next census, the counties of Hancock, Brooke and Ohio shall constitute the 1st senatorial district; Marshall, Wetzel and Marion the 2d; Monongalia, Preston and Taylor the 3d; Pleasants, Tyler, Ritchie, Doddridge and Harrison the 4th; Wood, Jackson, Wirt, Roane, Calhoun and Gilmer the 5th; Barbour, Tucker, Lewis, Braxton, Upshur and Randolph the 6th; Mason, Putnam, Kanawha, Clay and Nicholas the 7th; Cabell, Wayne, Boone, Logan, Wyoming, Mercer and McDowell the 8th, and Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe the 9th.

7. For the election of delegates, every county containing a white population of less than half the ratio of representation for the house of delegates, shall, at each apportionment, be attached to some contiguous county or counties, to form a delegate district.

8. When two or more counties are formed into a delegate district by the legislature, they shall provide by law that the delegates to be chosen by the voters of the district shall be, in rotation, residents of each county, for a greater or less number of terms, proportioned, as nearly as can be conveniently done, according to the white population of the several counties in the district.

9. After every census hereafter taken by authority of the United States, the delegates shall be apportioned as follows:

The ratio of representation for the house of delegates shall be ascertained by dividing the whole white population of the State by the number of which the house is to consist, and rejecting the fraction of a unit, if any, resulting from such division.

Dividing the white population of every delegate district, and of every county not included in a delegate district, by the ratio thus ascertained, there shall then be assigned to each a number of delegates equal to the quotient obtained by this division of its white population, excluding the fractional remainder.

The additional delegates which may be necessary to make up the number of which the house is to consist, shall then be assigned to those delegate districts, and counties not included in a delegate district, which would otherwise have the largest fractions unrepresented. But every delegate district, and county not included in a delegate district, shall be entitled to at least one delegate.

10. Until a new apportionment be declared, the counties of Pleasants and Wood shall form the 1st delegate district; Calhoun and Gilmer the 2d; Clay and Nicholas the 3d; Web-

ster and Pocahontas the 4th; Tucker and Randolph the 5th; McDowell, Wyoming and Raleigh the 6th. The first delegate district shall choose two delegates, and the other five one each.

11. The delegates to be chosen by the 1st delegate district shall, for the first term be both residents of the county of Wood, and for the 2d term one shall be a resident of Wood and the other Pleasants county, and so in rotation. The delegate to be chosen by the 2d delegate district shall, for the first term be a resident of Gilmer, and for the second of Calhoun county. The delegate to be chosen by the 3d delegate district, shall, for the first two terms, be a resident of Nicholas, and for the third term of Clay county. The delegate to be

chosen by the 4th delegate district shall, for the first two terms, be a resident of Pocahontas, and for the third term of Webster county. The delegate to be chosen by the 5th delegate district shall, for the first three terms be a resident of Randolph, and for the fourth term of Tucker county. And the delegate to be chosen by the 6th delegate diistrict, shall, for the first and second terms, be a resident of Raleigh, for the third term of McDowell, and for the fourth and fifth terms of Wyoming county—and so, in each case, in rotation.

12. Until a new apportionment be declared, the apportionment of delegates to the counties not included in delegate districts, shall be as follows:

To Barbour, Boone, Braxton, Brooke, Cabell, Doddridge, Fayette, Hancock, Jackson, Lewis, Logan, Mason, Mercer, Putnam, Ritchie, Roane, Taylor, Tyler, Upshur, Wayne, Wetzel and Wirt counties, one delegate each.

To Harrison, Kanawha, Marion, Marshall, Monongalia, and Preston counties, two delegates each.

To Ohio county, three delegates.

To Greenbrier and Monroe counties together, three delegates, of whom, for the first term, two shall be residents of Greenbrier, and one of Monroe county; and for the second term, two shall be residents of Monroe and one of Greenbrier county; and so in rotation.

13. If the counties of Pendleton, Hardy, Hampshire and Morgan become part of this State, they shall, until the next apportionment, constitute the tenth senatorial district, and choose two senators. And if the counties of Frederick, Berkeley and Jefferson become part of the State, they shall, until the next apportionment, constitute the eleventh senatorial district, and choose two senators. And the number of the senate shall be, in the first case, twenty, and in the last, twenty-two, instead of eighteen.

14. If the seven last named counties become part of this State, the apportionment of delegates to the same, shall, until the next apportionment, be as follows: To Pendleton and Hardy, one each; to Hampshire, Frederick and Jefferson, two each; and the counties of Morgan and Berkeley shall form the seventh delegate district, and choose two delegates; of whom for the first term, one shall be a resident of Berkeley and the other of Morgan county; and for the second term, both shall be residents of Berkeley county, and so on in rotation.

But if the counties of Pendleton, Hardy, Hampshire and Morgan become part of this State, and Frederick, Berkeley and Jefferson do not, then Pendleton, Hardy, and Morgan counties shall each choose one delegate, and Hampshire two, until the next apportionment.

The number of the house of delegates shall, instead of forty-seven, be in the first case, fifty-seven, and in the last case, fifty-two.

15. The arrangement of the senatorial and delegate districts, and apportionment of delegates, shall hereafter be declared by law, as soon as possible after each succeeding census taken by authority of the United States. When so declared, they shall apply to the first general election for members of the legislature to be thereafter held, and shall continue in force, unchanged, until such districts be altered, and delegates be apportioned under the succeeding census.

16. The regular elections for members of the legislature shall be held on the fourth Thursday of May.

By order of the committee.

DANIEL LAMB, Chairman.

HOUSE OF 47—Ratio, 1 Member to 6,477 Whites.

COUNTIES.		Whites according to census of 1860	Quotients	Fractions	Delegates
1. Pleasants	2,926				
Wood	10,791	13,717	2	763	2
2. Calhoun	2,492				
Gilmer	3,685	6,177	0		1
3. Clay	1,761				
Nicholas	4,470	6,231	0		1
4. Webster	1,552				
Pocahontas	3,686	5,238	0		1
5. Tucker	1,396				
Randolph	4,793	6,189	0		1

COUNTIES		Whites according to census of 1860	Quotients	Fractions	Delegates
6. McDowell	1,535				
Wyoming	2,797				
Raleigh	3,291	7,623	1	1,146	1
Barbour		8,729	1	2,252	1
Boone, 1		4,681	0		1
Braxton		4,885	0		1
Brooke, 1		5,425	0		1
Cabell		7,691	1	1,214	1
Doddridge		5,168	0		1
Fayette		5,716	0		1
Hancock		4,442	0		1
Jackson		8,240	1	1,763	1
Lewis		7,736	1	1,259	1
Logan		4,789	0		1
Mason		8,752	1	2,275	1
Mercer		6,428	0		1
Putnam		5,708	0		1
Ritchie		6,809	1	332	1
Roane		5,309	0		1
Taylor		7,300	1	823	1
Tyler		6,488	1	11	1
Upshur		7,064	1	587	1
Wayne		6,704	1	127	1
Wetzel		6,691	1	214	1
Wirt		3,728	0		1
Harrison		13,185	2	231	2
Kanawha		13,787	2	833	2
Marion		12,656	1	6,179	*2
Marshall		12,936	1	6,459	*2
Monongalia		12,907	1	6,430	*2
Preston		13,183	2	229	2
Ohio		22,196	3	2,765	3
Greenbrier	10,499				
Monroe	9,526	20,025	3	594	3
		304,433	29		47

* A Delegate is assigned in these cases for the fractions.

COUNTIES.		Whites According to Census of 1860	Quotients	Fractions	Delegates
Pendleton		5,873	0		1
Hardy		8,521	1	2,044	1
Hampshire		12,481	1	6,004	*2
Frederick		13,082	2	128	2
Jefferson		10,092	1	3,615	*2
7. Morgan	3,613				
Berkeley	10,606	14,219	2	1,265	2
		64,268	7		10

SENATORIAL DISTRICTS PROPOSED.

1. Hancock,	4,442	2. Marshall,	12,936	3. Monongalia,	12,907
Brooke,	5,425	Wetzel,	6,691	Preston,	13,183
Ohio,	22,196	Marion,	12,656	Taylor,	7,300
	32,063		32,283		33,390
4. Pleasants,	2,926	5. Wood,	10,791	6. Barbour,	8,729
Tyler,	6,488	Jackson,	8,240	Tucker,	1,396
Ritchie,	6,809	Wirt,	3,728	Lewis,	7,736
Doddridge,	5,168	Roane,	5,309	Braxton,	4,885
Harrison,	13,185	Calhoun,	2,492	Upshur,	7,064
		Gilmer,	3,685	Randolph,	4,793
	34,576		34,245		34,603
7. Mason,	8,752	8. Cabell,	7,691	9. Webster,	1,552
Putnam,	5,708	Wayne,	6,604	Pocahontas,	3,686
Kanawha,	13,787	Boone,	4,681	Fayette,	5,716
Clay,	1,761	Logan,	4,789	Raleigh,	3,291
Nicholas,	4,470	Wyoming,	2,797	Greenbrier,	10,499
		Mercer,	6,438	Monroe,	9,526
	34,478	M'Dowell,	1,535		
			34,525		34,270

The white population of the above 44 counties is 304,433, being an average of 33,825 to each district.

10. Pendleton,	5,873	11. Berkeley,	10,606
Hardy,	8,521	Frederick,	13,082
Hampshire,	12,481	Jefferson,	10,092
Morgan,	3,613		
	30,488		33,780

By general consent the report was received, laid on the table and ordered printed.

The Secretary reported the second sentence of section 5 as follows:

"All the said county officers shall hold their offices for two years from the first day of October next succeeding their election, except the sheriff, whose term of office shall be three years."

MR. DILLE. In the 61st line I move to strike out the word "three" with the intention of proposing "two;" and when the next clause comes before the Convention, to propose that he may hold the position for two consecutive terms.

THE PRESIDING OFFICER. The gentleman's object would be accomplished by moving to strike out the exception, all after "election" in the 60th line.

MR. DILLE. That will accomplish the same object. I think really that a sheriff should hold his office at least two terms if the people choose to elect him. At least all my observation and experience in connection with the sheriff's office would induce me to vote in that way. It may be that others have more experience in reference to these officers and have had worse officers and desire a rotation in them; but still I am inclined to believe that a sheriff should at least hold that office for two years and be eligible for two terms.

MR. VAN WINKLE. I do not know whether I understood the gentleman from Preston correctly. I understood his object is to reduce the term to two years and then allow him to be elected for two consecutive terms, making his whole term four years. He will notice it is the next clause that forbids the re-election for a second consecutive term. I have not on this as on many other subjects connected with these officers the practical knowledge to enable me to say except on general principles what I would think right about it. I believe, however, that in accordance with the practice that is contained in the constitution of 1850 it seems to have been indicated that the sheriffs should not have too long a term of service, but be obliged to give up the office at reasonable intervals in order that settlements may be made. I would call the attention of the Convention at this time to another clause of the next sentence: "but the retiring sheriff shall finish all business remaining in his hands at the expiration of his term, for which purpose his

commission and official bond shall continue in force." There will be no handing over of business from one sheriff to another. He will go on and finish up the business; which will give him sufficient employment and profit after settling with those who have placed business in his hands. I am, so far as I can judge about it, I am rather indifferent to this amendment—whether the sheriff should serve altogether three years or four years. That is the only question involved. I should like to hear from those who have more practical experience. I think in my own county we never had one defaulting sheriff—that is, within the last four or five years. We have had a few defaulting constables; but we have not been subjected to the evils of which others complain.

MR. SMITH. In case the amendment shall prevail, what would be the effect of it as regards the second term?

MR. VAN WINKLE. It is with a view, as the gentleman who made the motion stated, to also strike out the provision in the next sentence which forbids the sheriff from serving more than one term at a time and allow him to serve two terms, making a service of four years.

MR. SMITH. I would concur in the motion to strike out if it were not that I think another plan is much better for the country. Instead of having two terms, I should prefer to have one term of four years. The sheriff for the first two years, so far as my observation has extended, devotes himself entirely to preparing the way for a new election, and the county and parish levies are neglected and the revenue is neglected, and he is a defaulter. Then he gets in for a second term and tries to make up for his default. I should like the term to be four years because a sheriff in two years only learns the duties of the office, and when he becomes an expert sheriff he is removed and we lose the benefit of his past experience. But give him four years and one term and you avoid this difficulty, this objection to it of electioneering the end of the first year for his re-election. He has no inducement then. Give him the four years. But to make a good sheriff, who will perform his duties, a rigid sheriff, is better for the country; but a loose sheriff is ruinous to the country, the tax-payers, because they are delayed from year to year until they become a heavy and onerous duty, and then it is perhaps lost and it becomes exceedingly onerous, three or fours years of taxes resting on an individual at once and all to be enforced at once. But if he is rigid, collects it in small sums,

the party does not suffer. I think it would be greatly preferable to make his term four years, when all these causes which exist for inducing him to neglect his duty are disposed of and he has no other thing to occupy him but his duty to the country and to himself. I would object therefore to striking out for that reason, that the term should be four years instead of two—three certainly.

THE PRESIDING OFFICER. It would be competent to strike out "three" and insert "four."

MR. SMITH. I now make that motion, if it is proper.

MR. LAMB. I think we had better dispose of the first amendment first. The question will be more distinct.

MR. VAN WINKLE. The question is now: shall it be two years, three years or four years. Well, I believe in such cases it is usual always to take the vote on the longest term first, no matter in what order the amendments are offered. The Convention will, of course, understand that by voting one they exclude the other.

MR. BROWN of Kanawha. I think that past experience under the operation of the constitution of 1850-51, which gave us the election of sheriffs in two-year terms has demonstrated the wisdom of the proposition of the gentleman from Logan; and I think it is the experience of the country as the records of the office at Richmond manifestly show, that the sheriffs throughout the commonwealth, as a general thing, have appropriated the first term to secure an election to the second. When they cannot secure a re-election for the second term (or the third, whichever the prohibition is in the constitution), the same thing is attained by running a deputy for sheriff and the sheriff becomes the deputy in turn of the newly elected party. Now, that is the practice, and the result is that collections of taxes go neglected and everything is delayed, deferred, favoritism shown, in order to make friends for the second term. Now, as the gentleman remarked, it is manifest if you make it at once four years and forbid re-election for a consecutive term and forbid a sheriff from being a deputy for his successor, he has no inducement but to go forward and discharge his duty and save his securties from the penalties. Everywhere you find securities are being mulcted in heavy defaults. Well, now, the policy should be not only to secure the amounts that result from the liabilities of the sheriff but to secure people from being drawn into these. I

hope it will be the wisdom of the Convention to adopt four years instead of three and make one term final, however, the sheriff at the end of his term shall be conducted and wound up by him thereafter.

MR. VAN WINKLE. I should like to say one word—to call the attention of the members—because my own mind is not entirely clear on this subject. The sheriff's, I suppose, is the most valuable county office proposed—the most valuable office we have. My experience—or speaking from recollection, of those I have known to go into office is that a man by taking the office either makes money or ruins himself. And also it may be said that there is no medium course. A man hardly ever comes out of the sheriff's office without having either made a lot of money or lost all he had. He either makes or he loses and breaks himself up. A delinquent case that I knew of in my county was a singular one: a man of property; he had collected very closely; and yet his securities have actually paid in cash up to this time some eight or nine thousand dollars and neither he nor any one else can tell what has become of the money. This and my experience particularly with the office of constable, where I have seen it more, has led me to the conclusion that the difficulty is that the temptation of the office is great to any man; but unless a man has peculiar business qualifications it is utterly impossible for him to manage it so as to make money.

We propose now to make the term four years and to continue till the business is wound up. The sheriff will unquestionably be compelled by the legislature to give security, and ample security, for the discharge of the duties of his office. Now, how, I want to know, is this long term going to operate in reference to the security? Will it induce the securities, who are frequently men as well qualified for the office as the sheriff himself—will it induce them to look at what they are about to do? If the person who asks for security is not a man of business habits, to refuse to give that security; or will we go on giving security and signing the bonds of anybody who asks it? If by fixing the term long it will induce these securities to see that they have got to trust to something more than luck in the matter; that during the long period the office is to continue a great many things may happen to induce them to be more particular whose bonds they sign, then it is an argument in favor of four years. The true remedy, sir, would be, of course, with the people who elect this sheriff; but a knowledge of a man's business qualifications relating to figures and finances

are not usually very extensively disseminated among our agricultural population. They are not perhaps the best judges in reference to a man's qualifications for that particular office. They know him to be a good neighbor, an honest and upright man; they see him in the possession of property; they find perhaps he is even by means of his ordinary business operations accumulating property; but they are not, nor is every one, able to tell what a man can do in reference to things of this kind till he is tested, because it requires peculiar qualifications. It requires peculiar qualifications to make a good shoemaker as well as a fine statesman; and I don't believe Daniel Webster ever could have learned to make a pair of shoes. For this long term of four years unquestionable the sureties must run more risk than they would for the shorter term; but is it likely that with the best nominations, and the best intentions on the part of the candidates themselves, despite the greater risk of the longer term, there would be any greater caution on the part of those asked to go on the successful candidate's bond? My own impression is that in ordinary cases the longer term would make them more cautious. But then, on the other hand, if the term should be reduced to two years and the sheriff allowed to double it, making four years in all, would not this return to the people for confirmation be of some importance? Or would it have the effect such as, if I understood the gentleman from Logan, that the sheriff devotes his first term to secure the second? It is one of those exceedingly responsible offices, in which the people are so directly interested that the utmost caution should be used in everything that relates to it. And I state frankly that since what I have heard, my own impressions are in favor of four years. I should like if any gentlemen who know more about it would confirm me in it or tell me if I am wrong in that impression.

MR. DERING. I should not trouble the Convention on the present question did I not feel myself instructed to some extent by the people of my county on this subject. They are decidedly, sir, wherever I have heard an expression of the people, in favor of but one term for the sheriff; and it occurs to me that three years would be sufficiently long. A new broom sweeps clean, sir; but if you continue a sheriff in office too long, he becomes careless and negligent. You give any man or set of men power too long, and keep them in power and office, they become careless and negligent. Some gentlemen have proposed a term of four years. The committee themselves have recommended three years to be the term of

the office. It seems to me three years would be sufficiently long for a sheriff to be compensated and that they might then very well retire. If you make it two years you will make the time too short to receive that compensation which he should have. If you make it four years you increase the liability to negligence and neglect of business. Our people, sir, are clearly in favor of a moderate one term for the sheriff.

Why, sir, in our county we have a signal illustration of the facts that where sheriffs are permitted to be elected and re-elected, as they were under the old constitution eligible to the same office for two terms, the whole business of the sheriff during the first term is to provide for his re-election to the second; and during the second, his whole business is to procure the election of one of his deputies; and in that way, sir, the office has been handed down from high sheriff to his deputy ever since we adopted the constitution of 1850-51. He makes it his business the first two years he is in office to electioneer for sheriff for the next two years; and then for the next two years the sheriff and his deputies make it their business to electioneer for the election of one of the deputies for the following four years. And so the sheriffs have been a self-perpetuating body. The sheriffs in our county have been handing down the office to either themselves or their deputies ever since the change in the constitution. It is important, sir, that we should so guard the office of the sheriffalty that they will be held properly amendable to the people and be confined to one term of office, themselves and their deputies both being made ineligible thereafter. I shall vote for the three years term.

MR. SMITH. I beg leave to withdraw my amendment for the present. It is put in the front of battle, and I have an army on either side striking at me. I am competing with two propositions instead of one. I would maybe let them have the first fight, and then I will come in with my amendment and compete with the other. I think it would be better for my little bantam to be out of the ring for the present and come in after one of them is disposed of. I therefore beg leave to withdraw my amendment for the present and let the two-year and three-year men have their struggle first. I concur entirely in what the gentleman from Monongalia has said; but that is provided for in the Constitution, that the deputy shall not be a substitute. That thing has been practised in our county to a very considerable extent and was the cause of a good deal of exception. I have seen the operation of electioneering for the

second term. I am opposed to two terms and to the election of a deputy. My experience and observation in the various counties in which it has been my business to become informed is that it is mischievous. These amendments not only strike at the root of the evil; but I do think that after a sheriff has become competent to discharge the duties the public, who are then interested in the residue of the term ought to have his enlightened services. I therefore prefer four years. If I cannot get four, I would prefer three to two. But for the present, I will withdraw my amendment and ask that the question be put on the two and three years.

MR. SINSEL. I see nothing in this clause to prevent the retiring sheriff from being deputy to his successor.

THE PRESIDING OFFICER. The question will arise in the next sentence. The exclusion is not under consideration now.

MR. SINSEL. And then you will see, if you go on with this, that you are here prohibiting the deputy sheriff from being elected while the principal himself may be the deputy of his successor.

THE PRESIDING OFFICER. The gentleman from Taylor does not understand it. So far as the matter of exemption is necessary to be used as an argument it is proper; anything on that point would be proper when we arrive at the next sentence.

MR. SINSEL. Very well.

MR. BROWN of Kanawha. The gentleman from Logan having withdrawn his motion, I shall have a word to say. What I wish to say will be to the general question, whether the amendment is offered hereafter or now, the difficulties suggested by the gentleman from Wood in regard to these bonds. Now I have some experience in this matter, and I know that the difficulties on that score are very great. I alluded before to the general history of the state. Unless gentlemen are familiar with that, perhaps it would not strike them with force in this argument. But I believe it cannot be controverted by any gentleman that the defaults of the sheriffs to the commonwealth are three-fold what they were before this constitution which elected sheriffs by the people was adopted. It is the experience of the last ten years. I know in Wood, Jackson, Putnam, Kanawha and Cabell, and I have been informed in Boone and Logan—of the other I cannot say—

MR. SMITH. Raleigh.

MR. BROWN of Kanawha. In those counties, in every single instance, sir, have the sheriffs been sued and judgments recovered for their defaults against their securities to the amount of thousands upon thousands. Innocent men are deprived of all that they have. Now, take these same counties under the old constitution and I doubt whether in the whole of them any such thing can be found from the date of the commonwealth to the inauguration of this constitution. There may have been a notice against an officer for some trifling default, but no such thing as a judgment against the sheriff and his securities was a rare occurrence. Now, why this mighty change but for the fact that this thing of electing your officer by the people prompts the incumbent to use his position to secure his continuance in it, and as a result the officer becomes a defaulter and his securities are liable. If he fails of a second election, then comes the judgments. If he succeeds, what then? It is the general understanding, and I believe it cannot be successfully questioned that all his collections are applied to supply the defaults of the first term. Every security of the defaulting sheriff of the first term is bound to aid in the success of this officer or deputy who is to step into his place in order that the funds and revenues that may come into the hands of the second officer may discharge the first liabilities, and the second men are drawn in unwarily into liabilities they have little understood to find themselves involved for more than they are worth at the end of the second term.

Now these are existing facts that have grown out of this very condition of things. The question is, will you perpetuate it? The matter is one of practical experience of ten years all over your state; for I doubt very much whether in one-half of the counties of the state there have not been judgments against sheriffs and their securities for defaults. With this experience and light before you, you will now learn wisdom by experience. The question is whether you will, in the light of this experience, lengthen this term to a time sufficient to allow this officer a full opportunity of fulfilling his duties; and when he has done it, we should permit neither him nor his deputies to become his successor, nor permit him to be the deputy of his successor, which will accomplish the same end. In most of the counties I know it is the rule that the deputy this year is to be the sheriff the next, and the outgoing sheriff then becomes his successor's deputy; and then at the end of that term the tables are to turn again; and thus it is kept up by turns as long as these men can effect the election of each other. Now, the

object is to end that. The reason we desire to end it is the evils that grow out of it. That is to be accomplished by giving to your office four years. I concur in much that was said by the gentleman from Monongalia, but I differ from his opinion that three years is a long enough term. I think experience shows four years is barely long enough and that the termination of the office will have to continue on to wind up the business if that term is found insufficient. In this case you always understand when a man goes security for the sheriff he knows that officer never can subject him to any other law by any other change. He knows he has got to stand up to the liabilities to the end of the four years, and it will make him more chary about how he goes into the bond and more watchful to see how he discharges his duty; and the sheriff will not find it so easy to mulct the whole community. When you have accomplished these two ends you will have done much to secure the rights and property of the people. For this office is important. It comes in contact with the whole community, debtor and creditor. And here I beg to remark another thing. Under the old constitution the sheriffalty was always farmed out. The high sheriff never in any instances that I know of undertook to discharge the duties himself. The consequence was that he always selected his deputy with a view to his qualifications and cared nothing about the matter of popularity. He wanted the man who would save him harmless from all liabilities; and that is the reason the man was chosen by the high sheriff with a view to his qualifications—the reason why you never had judgments against the sheriffs; because they were so much better. Now, our object is to secure that very same qualification in the officer. Give him time to qualify himself and to carry out and execute the office and make his securities liable for all defaults, with no possibility of shifting that liability on the shoulders of some other securities who are not aware of what is transpiring.

MR. STUART of Doddridge. I believe that to be the greatest good to the greatest number of people. I have been sheriff and the surety of sheriffs for the last twenty years and I believe I know as much about it as most persons. I am for frequent recurrence to the people myself; and if I was addressing now the mass of the people before my friends of the township meeting, I know that I would have no difficulty in carrying my point, and that is adopt the shortest possible term for these sheriffs. I presume the reasons assigned here now to increase the number of years, is, that they

will go on and execute the office without any regard to the sentiment or feelings of the people at large. If we elect a sheriff, my experience is, that one year would be the best term we could elect him for, because then he would be disposed to perform the duties of the office courteously and kindly towards citizens and be disposed, sir, to pay over in order to satisfy his sureties. If you give him four years it will be that much more latitude, and if he is disposed to be a rascal it will give him an opportunity of defrauding the sureties out of a greater amount of money. We want none but honest men as sheriffs; and the great difficulty the gentleman from Kanawha has now spoken of is the fact that after this election the sheriff—a majority of them—were totally unfit for the position. And my experience in the losses by these sheriffs is not that they did not clear, but that they cleared and squandered and spent—were reckless. If they had not collected it, the sureties would not have been hurt, because the debts would have been there and could have been called in and the claims could have been met with the taxes to have been collected. In nearly every instance in my knowledge it has been squandered and spent by the recklessness and dishonesty of the sheriffs in that he was holding out inducements to be elected again and used the money.

Now, sirs, if we have an officer of that kind, is it not better that he should return to the people in one year, than that he should be allowed three or four years? It would be much better. If a man proves himself to be a good sheriff, an honest, faithful man who looks to the interest and welfare of his constituents ought not the people have a right to elect that man again, if they choose to do so, instead of trying another experiment and picking up another man whose qualifications they are totally unacquainted with? Let them return at short periods. They will soon find out who is the man that should be sheriff, and who is the man that is not to be trusted; but they cannot do much wrong in one year, and if he proves himself to be an efficient and good officer in one year the people will elect him again. If he is a kind and well disposed man and looks to the interest of the people they will elect him; but if he is arbitrary, selfish, and does not care for the interests of his fellow men, as I have seen some do, of course they will not elect him. Is that the kind of a man you want to make out of your sheriff? Or is it the man who will look to the interests and feelings of his constituents and indulge them as much as possible? Should we seek to make out of the sheriff an unfeeling tyrant by saying to him that he is never to look to the people again for any continu-

ance of his office? He may oppress and destroy the people as much as he pleases, still it makes no difference he has his office four years and need not look any further. Now that would be the result. When I acted as sheriff, I acted for one year and renewed the bond next year. I believe nobody ever lost any money by it; and if you had the same rule this day, there would be no defalcations. There are more defalcations at present than there were under the first constitution. A sheriff had to renew his bond every year; and if he had to do the same now we would have very few defalcations because the case would be scrutinized at the end of every year. I would be for fixing it at four years, and I believe the gentleman from Logan has withdrawn his amendment. I now move to amend by making it one year and I cannot see anything that would result unfavorably but everything that is right in my honest opinion—the safety of the people, the safety of the government, the safety of everybody. Now I have been a standing surety for twenty years as I remarked, and I do assure you I would be very unwilling to go on a bond for four years, or three or even two. In one year the sheriff would show what he was, whether capable and reliable. At the end of that time if he was not such, his surety would be out of the way and the people would understand the character of the man and they could re-elect him or let him alone.

MR. DERING. I am decidedly opposed to the amendment of the gentleman from Doddridge; and, sir, I think I fully appreciate his arguments—his last argument that the people should be favored. Why should the people be favored? Why, sir, in the election of a sheriff above every other officer in the commonwealth, qualifications and promptness should be required at his hands. What is the object of electing a sheriff? It is that he may collect your taxes and the debts that are sued for and that he may be prompt in a discharge of the obligations he takes on himself. And shall he be elected, sir, with a view to please the people? Shall he be elected for his qualifications and the promptness with which he discharges his duty, or shall he be elected every year to electioneer for the succeeding term to favor the people at the expense of the State, the counties and the creditors? Sir, I am not in favor of this doctrine. The sheriff above every other officer should be elected with a view to the full and prompt discharge of his duties; and if you will make him returnable to the pepole for his election a second year, he will perpetuate his office. In our county

some of our sheriffs have let their old taxes lay over and accumulate until there are thousands of dollars that cannot be collected. They have let their old debts run on until you cannot get a cent out of them. Why, sir, I was the security of a sheriff some six or eight years ago and he has got into the ring of deputies until he has perpetuated himself in his office ever since. His old business is not closed up to this day. I do not know what liability I am liable for. I am in favor of favoring the people wherever it can be done. The State requires that these taxes shall be paid promptly; and I am of the opinion that the sheriff when a trust is put into his hands has nothing to do with favoring the people; that he is traveling out of his road when he gives them indulgence at the expense of the creditors. The law lays down his duty and it is his duty to fulfill the obligations of his oath and the law. He has no discretion left him, he is to go on and fulfill the law and the oath he has taken on himself to discharge his duties faithfully and promptly. I would be in favor of three years; but, sir, if I cannot get three I will accomodate myself to four years. I am not in favor of these short terms for offices, giving them time and leisure to operate on the people and get their favor so as to be re-elected again. I trust that it will be the pleasure of this Convention not to adopt the amendment of the gentleman from Doddridge.

MR. HAGAR. It seems to me we are getting too much linked together. To strike out and insert is two amendments. I understand the first thing is to strike out before anything can be inserted. I am in favor of striking out, and then will hear the amendment by insertion.

MR. VAN WINKLE. I perhaps misled the Chair in stating the manner of voting on time and numbers. The motion of the gentleman from Preston was to strike out the exception, leaving the term of sheriff two years. Well, now either it is competent for the gentleman to move to amend the sentence proposed to be stricken out by inserting one instead of three and then the question be taken on the motion of the gentleman from Preston.

MR. DERING. I ask for a division of the question.

The vote was taken on the motion of the member from Preston to strike out three and insert one, but before it was announced—

MR. HAYMOND. I am decidedly with the gentleman from Doddridge, for the shortest term. The sheriff is a very important

office, and if we happen to get a bad one the sooner we dispose of him the better. If he is elected for three or four years and he is a bad one, it becomes ruinous to the whole people. The gentleman from Monongalia appears to think that a sheriff should be everybody. I will say to the gentleman from Monongalia that a sheriff is not the people; I will say to him that the people are the sovereigns of this country and the people need not be ruled, and they do not intend to be rode over by any sheriff. I am in favor of the shortest term, and if we get a good one we can re-elect him; and if we get a bad one we can turn him out.

MR. VAN WINKLE. I would call the attention of the gentleman from Marion to a subsequent section which provides for the removal of the sheriff for neglect of duty and various other things. I think this may obviate the objections of the gentleman from Marion to the longer term and perhaps the objections of the gentleman from Doddridge also.

MR. BATTELLE. Have we created any other office the term of which is three years?

THE PRESIDING OFFICER. I am not able to answer as to any.

MR. STUART of Doddridge. There is none.

The motion to strike out "three" was put and decided in the affirmative.

The question recurring on the motion to insert "one" it was lost.

MR. SMITH. I now move to insert "four."

MR. STUART of Doddridge. I move to amend by adding "two."

THE PRESIDING OFFICER. The amendment is not in order, because the proposition of the gentleman from Preston is the same.

MR. VAN WINKLE. If the "four" is voted in, then the question will recur on striking out the whole and leaving it "two"; so he will still have a chance at "two."

MR. STUART of Doddridge. I thought the amendment of the gentleman from Logan was subject to amendment.

THE PRESIDING OFFICER. It is an amendment to an amendment. He offered it as an amendment to the motion of the gentleman from Preston, which is to strike out after the word "election"

in the 60th line, which would leave the term two years. The gentleman from Logan proposed to amend by filling the blank with "four" years.

MR. WILLEY. I do not know, sir, whether it is very becoming in me even to express an opinion—just popping in by accident, as it were just now, and not very able to think or even express an opinion. But I have a very strong wish that this blank shall be filled with four years. Almost all my active life, sir, has been spent more or less with business in connection with this office of sheriff. I have had occasion to observe its operations. I have occasion to form a very decided opinion in regard to this matter, and I simply desire now to express that opinion without being able at all to give any particular reasons for it. But this Convention will do well for the people if they insert four years. As to the objection of my friend from Doddridge as to having an oppressive sheriff, to making the officer frequently responsible to the people, that may do in regard to your representative officers, but I think it can have very little reference to executive officers, especially of this character. The law prescribes the duties, it marks out and defines his duty, and he has got nothing to do but to perform his duty. He has but to walk where the law directs that he shall go and do what the law directs him to do; and if the laws be good, such as will promote the interests of the people then the interests of the people will be promoted, not by departing from them, not by bending the laws to suit the imaginary emergencies of the people, but it will be by executing those laws devised by the people's agents in the legislature for their own good and for the promotion of their own interests. That sheriff best promotes the interests of the people who is prompt and efficient, exact in the discharge of his duties as those duties are laid down by law; and if you are to hold out the necessity on the part of the sheriff to be elective every year, year by year, or be frequently elected, I know, sir, by 25 years practice at the bar, that you will have little done in these short elective periods but juggling and management on the part of the sheriff with a view of currying favor that will secure his re-election. Let the law lay down the duties of the sheriff as they ought to be performed; let it be required that he shall perform them as they are laid down; prescribe the necessary penalties to compel him to do it and the necessary punishment if he varies from it. That will promote the interest of the people much better than this frequent recurrence of elections. I have executions

that I paid off six years ago that I cannot get out of the hands of the sheriffs of Monongalia county. Rather than press the sheriffs I have executions in their hands now six years old. The sheriffs have told me that they favored individuals with a view of propitiating favor for a re-election. I know it is the case. All the difficulties of the gentleman from Doddridge ought to be provided against by the laws defining the duties of the sheriff and punishing him for malfeasance if he be guilty. I hope the longest period possible will be inserted. I speak but from experience, sir.

MR. RUFFNER. I rise to inquire, sir, whether it would be competent to move an addition to this sentence after the period for which the sheriff shall be elected? To add a clause requiring his bonds to be renewed annually, if that, sir, would be lawful?

MR. VAN WINKLE. It will come in the next section.

MR. RUFFNER. It would do away, very greatly with the objection to these long terms.

MR. VAN WINKLE. When we come to the next section, it will be the proper place. It provides there the legislature may require security. If the gentleman chooses to offer the amendment, it will be proper there.

MR. RUFFNER. Under a requirement for the renewal of these bonds, I should decidedly favor the long term and deprecate a frequent recurrence to a vote of the people where so much juggling and unfairness is practised by the sheriffs to secure re-election.

MR. HAYMOND. I am at a loss to know what kind of laws they have down in Monongalia. One of the gentlemen told us on Saturday that they could not collect a single dime from any officer, and we have been told today by the other member from that county that he has claims out six years and cannot get a dime. Well, now, in other counties there is some way to force officers to pay. I do not know whether this law is limited to Monongalia or not.

MR. DERING. Did the gentleman from Monongalia say sheriffs.

MR. HAYMOND. From constables.

MR. STUART of Doddridge. The gentleman from Monongalia seems to think the sheriff was a life-long officer perhaps my objection would be good, but as he is simply an officer who is to execute

the law, it is not well taken. I would like to make the inquiry whether it is the officer the people elect, or the officer of the government, or the officer of the party, who are collecting these debts?

MR. WILLEY. It is pretty hard to tell in our county whose officer he is.

MR. STUART of Doddridge. I suppose he is the officer of the people—the servant of the people; and the people certainly ought to have a reasonable power over their own officers. They ought not to be made these unmitigated tyrants, who I know meet the views of all the blood-suckers in our country. I do not mean the gentlemen from Monongalia and Logan; but that is a fact, travel through our country wherever you will. I have been through it a great deal in the last four or five years and this question has often been discussed; and wherever you find one of these blood-suckers —one of these unfeeling tyrants—one of these men who are not disposed to consider the interests of the people—you will always find that man saying that this sheriff ought to be a life-time office and he ought never to be amenable to the people at all, because if he is he is disposed to favor the people. Now, that is the argument; that is the true position of this class. If it was left to the majority of the people of this State to say, they would want to have the control over these officers they are called on to elect. And I will venture to say that if this amendment is adopted, inserting four years, there will be a greater clamor against that in less than three or four years than against any other provision of this Constitution. Now mark what I say. This will convert these officers into unmitigated tyrants; and what is the operation of our present constitution on these officers? Every one present will answer, it authorizes the sheriff to pay in the revenue against a certain period of time—so much against March, and such a time. Well, now, it will be the interest of these sheriffs when the books are placed in their hands in June or July, to collect immediately—collect at once; make one trip, call upon a man and if he does not pay his taxes, here's your horse, sir. Under our present law, the sheriff having to pay in the revenue at a certain time, I have known fifty instances where the sheriff rather than distress his people, the citizens of the county whom he knew to be good and honest men, drew up a bond and went to the bank and paid the required sum necessary to pay in to meet his obligations and keep his sureties from being notified. Now, sir, if we left the thing to the

people, that thing would never occur. The sureties would be the best kind of men. But instead of seeking to accommodate the people, he will expose their property to sale, and no good could possibly result to any party. The government would only get their money while the poor man's cow and horse would be sacrificed on the streets for the want of a few days or months indulgence. That will be the experience and practice under this provision. I want the sheriff to be elected and to have no provisions inserted here disqualifying him for re-election provided the people choose to elect him and he can give the security. Well, the gentleman says the law exempts a poor man's cow and exempts a bed from taxes. I do not know how our law may do, but a man cannot live on one cow, and of course his second cow would be just as good to him as the one cow. I would be disposed to hold out inducements to these sheriffs to accommodate this poor man who he knew was honest and would pay him. But if you adopt the long term, the blood-suckers will be benefited and the mass of the people will be distressed. Now, that is the truth of it, mark what I tell you.

MR. HAGAR. One of the arguments introduced for four years seems to be the qualification of the sheriff—learns how to do the business. From what I have learned from observation, it is hard to get a man with a good heart and a good head. Perhaps there will not be a county in this new State that will not have a man competent to discharge the duties of sheriff. Give them four years and then time sufficient for them to settle up the business in their hands, and we might just as well say five or six years. In the county where I live we had one sheriff over two years; and then when he could be no longer elected his son was elected. One of our good friends came out against him; and we thought these life-long office-holders were not altogether right and we voted the other man in and beat his son. Hence they had it only six years. As soon as the term was up, his son must have it. I have never seen any advantage accruing to the public, so far as my observation goes by men holding office too long. Now, if we could always get just the right men in, and nobody else was fit for it, I would go in for a long time, but the object of this Convention is to frame a Constitution to give every man an equal chance. Well, now, there must be some one man in every county who is qualified to do this sheriff business. Then when this man had had it two years, if there was another provision in the Constitution to wind up his

business—about three—that would be the shortest time anyhow. I am opposed to the amendment. I am opposed to these life-long office-holders. This has ruined, to some extent, our state and nation. We are here to frame a Constitution to give all an equal chance. The sheriffalty, if it is worth anything, will pay a man for discharging the duties two years, or three, because he will have a year's work to do after his term is ended. I am against the amendment.

MR. WARDER. I would like to ask the yeas and nays on this subject.

On the motion to make the term four years the vote was taken and resulted:

YEAS—Messrs. Brown of Preston, Brown of Kanawha, Battelle, Chapman, Dering, Dille, Hall of Marion, Harrison, Irvine, Lamb, Montague, Mahon, Parker, Robinson, Ruffner, Sinsel, Stephenson of Clay, Stewart of Wirt, Smith, Taylor, Van Winkle, Willey, Warder—23.

NAYS—Messrs. Brooks, Brumfield, Hansley, Haymond, Hagar, McCutchen, O'Brien, Parsons, Powell, Simmons, Stevenson of Wood, Stuart of Doddridge, Soper, Wilson—14.

So the motion was agreed to.

THE PRESIDING OFFICER. The question recurs on the amendment of the gentleman from Preston, to strike out the exception, which will leave it two years.

MR. DILLE. Mr. President, I have, I believe, by the amendment probably obtained what I desire; if not, I can do so and I will now withdraw my amendment. When I proposed it with a view of making it four years by an additional term.

MR. STUART of Doddridge. It may be, Mr. President, that some person voted with an understanding that they had another chance to strike out. I do not make any objection myself.

There being no objection the amendment was withdrawn, and the question recurred on the sentence as amended.

MR. VAN WINKLE. I move to strike out "the 1st day of October" and insert the day we fixed for the commencement of the term of State officers, the 4th of July, in the 59th line. I think there was a general understanding to have all these terms commence, as

nearly as possible, at the same time. The fourth of July was inserted in the report of the legislative committee as the commencement of the terms—with perhaps an exception—and I simply wish to conform this to that.

The amendment was agreed to.

MR. STUART of Doddridge. I move to amend by striking out, in the 36th and 37th line, all after the word—

THE PRESIDENT. We have not yet reached that section.

The second sentence, as amended, was then adopted, and the Secretary reported the third sentence:

"The same person shall not be elected sheriff for two consecutive full terms, nor shall the deputy of any sheriff be elected his successor; but the retiring sheriff shall finish all business remaining in his hands at the expiration of his term, for which purpose his commission and official bond shall remain in force."

MR. VAN WINKLE. The gentleman from Doddridge will pardon me, to perfect this sentence. After the sheriff has been out four years he can be elected again, but it is suggested to me that a deputy might resign one week before the election and thereby evade the operation of this clause. I would therefore ask to amend it by adding after the words: "The same person shall not be elected sheriff for two consecutive full terms," these words: "And no person who has acted as his deputy within one year shall be elected as his successor." If the deputy wants to be his successor, he will have to go out one year preceding the time. Strike out the words: "Nor shall the deputy of any sheriff" and insert those other words.

MR. BROWN of Preston. What is the necessity of inserting the words: "within one year?" "Nor shall any person who has acted as his deputy," I think would cover the whole ground.

MR. VAN WINKLE. My view was this, that a deputy who had abandoned the office a year previously was so disconnected with it—

MR. DILLE. Better embrace the full term: "Nor shall any person who has acted as his deputy during his term be elected his successor."

MR. BROWN of Kanawha. I confess that if the motion of the gentleman from Wood were confined to one year, I should have no objection. But if it is made to apply to the whole four years, then

it operates to the exclusion of all the men perhaps who by their official acts have, to some extent, qualified themselves for the office. The only object in excluding is to avoid the evil of a party preparing himself by virtue of his office, using it for the purpose of re-election. The withholding that from a party who has acted as deputy within a year next preceding the election attains the end sought, I think. I can understand that in the office of the sheriff those gentlemen who have acted as deputy will generally be the best qualified for the next office, and if their official duties ever shall place them in a position to have a tendency to put them to electioneering for the office and prostituting the office for the purposes of the succeeding election, they ought to be free and the people free to choose from that class of men; and I think this unnecessary restriction is liable to that objection. I will offer that as an amendment.

MR. VAN WINKLE. I accepted the modification without much reflection.

MR. BROWN of Kanawha. Then I will renew the motion to fix the time at one year for his exclusion.

MR. STEVENSON of Wood. I only wish to say, sir, that I prefer the modification of the amendment if it is to apply to a person who had acted as deputy any time during the term, and for this reason: that a deputy, in many places at least, in many populous towns, where there is a large tax collected, can very well afford to resign one year before the expiration of the term in order to be elected sheriff, and would do it in many cases. That is an objection to this last amendment. I am in favor of the other; but I think, from my present view of the matter, I am opposed to this for that reason simply.

The Secretary reported Mr. Van Winkle's motion as being: strike out "Nor shall the deputy of any sheriff" be elected his successor, and substitute: "Nor shall any person who has acted as deputy of any sheriff" be elected his successor. Mr. Brown's motion was to qualify this by inserting after "sheriff" the words "within one year."

The vote was taken on Mr. Brown's amendment, and it was rejected.

MR. SINSEL. I move to insert "within two years."

The motion was not agreed to.

Mr. Stuart of Doddridge asked for a division of the question on Mr. Van Winkle's motion.

The question was first taken on striking out and it was agreed to.

The question recurred on inserting the language proposed by Mr. Van Winkle.

MR. STUART of Doddridge. The object of inserting this—it indicates that even the deputy sheriff shall not favor the people or look to a promotion of his office by acting kindly and generously towards the people.

MR. DERING. I am opposed to the motion of the gentleman from Wood. I think to make your sheriff ineligible for one term, it is highly important we should so make his deputy.

MR. WILLEY. That is precisely the motion.

MR. DERING. I misunderstood the motion.

The question was taken on the amendment of Mr. Van Winkle, and it was agreed to.

MR. WILLEY. I propose the following amendment: I do not know whether it ought to come in in the 63rd line, after "successor," or in the 62nd line after the words "full terms."

MR. VAN WINKLE. The Committee on Revision will attend to that.

MR. WILLEY. I propose to amend by the insertion of the words: "Nor shall said sheriff act as the deputy of his successor."

The amendment was agreed to.

And the question recurring on the sentence as amended, it was adopted.

The Secretary reported the next sentence: "The duties of all the said officers shall be discharged by the incumbents thereof in person or under their personal superintendence."

MR. VAN WINKLE. The effect of this clause, Mr. President, in the conception of the committee at least, is to make the principals in all cases the responsible officer, and also to compel them in

person to discharge those parts of the duties of their office which they can so discharge. If the law fixes that the sheriff, and as is already implied, his deputies, they will, of course, have certain duties to perform and the sheriff certain duties; but nevertheless, the high sheriff must be held accountable for their acts because they are to be done under his personal superintendence. He cannot afterwards plead any excuse of himself for what his deputy has done wrong. So also in the case of deputy clerks. The clerk in many offices will have to have assistants; but he must be responsible personally for the acts of his assistants. I suppose it is not necessary to say anything more to show what is the intention of the clause, and which I think it will effect.

MR. BROWN of Preston. I would inquire of the gentleman from Wood the effect of this sentence that we now propose to adopt—whether it is intended that the prosecuting attorney may act by deputy?

MR. VAN WINKLE. Not unless the law authorizes it. It is for the legislature to say. The gentleman will observe the committee have been cautious in that respect. They have not put anything more in this in the nature of legislation than they could avoid. Some things were rendered necessary by the very fact of a change; but they have left to the legislature entirely to prescribe the duties and so on in reference to these officers, as appears in the next section. Whether a prosecuting attorney may so act or not will be for the legislature to decide. He may have assistants, of course. But it is not precisely one of those cases that would be reached here because he acts as deputy. Well, there is no use speculating about what the legislature may do respecting it. It will be in the hands of the legislature.

MR. WILLEY. I am entirely favorable to the purposes designed to be accomplished by this clause; very much in favor of it especially in regard to the sheriff. I have seen its practical operation in the county of Preston where the sheriff required his deputies to report to him and he settled all the business himself, and I never saw business better done. But I would suggest to the gentleman from Wood whether difficulties might not grow out of this with some of these offices. Suppose, for instance, some of these principal officers should be sick for a while, entirely incapable of attending to his business—would not there be a constitutional rule that would suspend the operation of his office entirely during that

casualty? It seems to me there may be a thousand circumstances when many of these officers could not be present to superintend. It might lead to difficulty. I do not know; I merely throw out the idea.

MR. VAN WINKLE. The case of inability to act, of course, excuses performance. No constitutional provision could be strong enough to force a man to do what he is unable to do. There are discharge clauses in the next section, as, for instance: "The legislature shall, at their first session, by general laws, provide for carrying into effect the foregoing provisions of this article." The gentleman might add—

MR. WILLEY. A somewhat qualifying term: "Whenever practicable," "possible," or something of that kind.

MR. VAN WINKLE. Might add at the end of the sentence I have just read: "And for the discharge of the duties of said office in case of the inability of the incumbent." But it would come in more properly in the next section than here, I think, in authorizing the legislature to provide for what are to some extent exceptional cases. This sentence now under consideration might stand. If the gentleman will defer it, I will make the amendment at the proper place.

MR. WILLEY. Yes, sir.

MR. BROWN of Kanawha. The gentleman from Monongalia gives more importance to the personal superintendence than it warrants. If that is to be carried to the extent indicated, then I must oppose the whole sentence. But I confess I do not so understand it. I understand all the acts of the deputy are the acts of his superior. His very office is at the will and pleasure of his superior and he can be discharged whenever the principal chooses, who assumes all the liabilities and responsibilities of his conduct, whether he does right or wrong. Without that it would not do; never have any deputy at all. But to avoid any difficulty about it, I will move to strike out the word "personal." Now I do not understand that if a deputy goes out in the far edge of the county and serves a writ that the principal must be there and see that it is rightly done; that if a deputy settles an execution with a creditor and settles up and disposes of the whole matter and returns the execution satisfied, that that must be examined by the principal to see that it is all right. But I understand superintendence of the

principal is the general superintendence of the deputies' conduct, for which he is responsible. The word "personal" seems to imply that he is to be present superintending everything that is to be done.

MR. VAN WINKLE. I think the gentleman has very truly stated what actuated the committee. I do not see that there is any objection to striking out that word.

The amendment offered by Mr. Brown of Kanawha was adopted; and the question recurring on the adoption of the amended sentence, it was agreed to, as was also the section as a whole.

MR. WALKER. I hold in my hand a petition from several citizens of McDowell appointing John P. Hoback a delegate from McDowell.

The petitions, signed with thirty-five names, were sent to the Secretary's desk and read by him.

MR. VAN WINKLE. I will move to make that matter the order of the day for half-past three.

MR. BROWN of Kanawha. I desire to vote for the admission of that gentleman; would be very highly pleased that McDowell has sought to be represented in this Convention, but at the hour indicated I cannot be here.

MR. VAN WINKLE. Well, sir, I will withdraw it.

MR. STUART of Doddridge. I would like to know whether those petitioners are citizens of McDowell?

THE PRESIDING OFFICER. The opinion of the Chair is it would be irregular to take up this without a motion.

MR. BROWN of Kanawha. I move, therefore, Mr. President, to suspend the business under consideration and take up the petition.

MR. STEVENSON of Wood. I think, sir, it would be better to refer that petition and all such others to the Committee on Credentials. The way we are proceeding in reference to adding members here is rather irregular. The committee can report, and we can act immediately.

MR. WILLEY. I concur most heartily in the suggestion. I rejoice that these counties are seeking representation; but I think

it is a matter of importance enough to require at least the forms of law. We ourselves, regularly elected, had to submit to the scrutiny of the Committee on Privileges and Elections, and I think this should go there. I shall rejoice in being able to vote for the admission of that member.

MR. STUART of Doddridge. We have adopted the precedent here, and I am not in favor of making fish of one and flesh of another. Treat this gentleman as we have treated other gentlemen who come here with petitions. Consider it now and dispose of it.

MR. VAN WINKLE. The precedent was set in the case of the gentleman from Calhoun. I made the motion; but the Convention will remember that that was a very plain case. It stated in the petition all the facts, that they had been prevented from holding an election; that the whole Union vote given on the question of the secession ordinance was about fifty and they produced signatures to the number of seventy, with the intimation that they were very nearly all the Union men in the county. But, sir, it had more than that. On the back of it was the affidavit of several respectable gentlemen who were known to persons here testifying that the facts set forth in the petition were true on their oaths. I asked in that case to dispense with sending it to the committee, because we could have no more facts before us than were presented by the petition. I think it was a remarkably strong case. The Convention concurred with me, and the gentleman was admitted. A few days afterwards a gentleman was admitted from another county, very properly, I dare say, but on a bare fifteen signatures; so that I think the precedent set in the case I had the honor to present to the Convention has not been followed in the subsequent case. In this case we are referred, for the truth of the statements to Mr. Walker, a member of this Convention, and it would be very proper, I think that the committee should take it in hand and ascertain that the thing is what it purports to be, when I have no doubt the gentleman will be admitted. Merely that we may have some evidence before us that the facts as set forth are the facts and that the document is a genuine one.

MR. WALKER. In regard to the credentials here offered, I am very well acquainted with the gentleman that is here asking for a seat and tolerably well acquainted with the most of the citizens of McDowell and with a portion of the signatures here that

are those of Union men. The county voted for the secession party strongly; but in that county I am apprised there are a good many strong Union men who desire to come with us and wish to be represented as such. This gentleman who is asking a seat here is, I think, of sound principles in regard to the Union and a very respectable citizen of the county.

MR. STEVENSON of Wood. The motion is to suspend the order, I believe. I offer that amendment, if it is in order, to refer to the committee.

MR. BROWN of Kanawha. I do not see that anything is to be obtained by the reference. When the report of the committee comes back, the house has got to act right, precisely in the same way, that is on the recommendation of the Committee on Credentials. I understand there is a gentleman near me who is conversant as to the citizenship of the signers there—one of the members of this body. It seems to me it is only making bites at a cherry and changing a rule that we have adopted as to others. I hail with pleasure the voice from McDowell, one of the first counties that have been induced by our action within the limits of the new State. I hope we will meet them at the threshold with a warm welcome and the right-hand of fellowship.

MR. STEVENSON of Wood. I hope it will not be understood that I have any objections whatever to receiving this gentleman to represent that county if the Committee on Credentials can be satisfied that he ought to represent that county; but it does seem to me that if we are to set a precedent of this kind we may have yet quite a number of these petitions and a great deal of the time of the Convention will be occupied in considering them when the same thing could be considered by the committee of some three or five persons who could easily ascertain the merits of each case and report their conclusions to the Convention, and the Convention could act on their report without much discussion. These may give rise to discussion and consume a great deal more time than if referred. Besides, it is more regular and I think far better in the end. I hope, sir, if the facts are such as they ought to be this gentleman will be admitted. But I wish myself that hereafter, and shall undertake to enforce this view on the Convention, that every such petition of an irregular character coming in shall pass through the regular Committee on Credentials. The Convention owes this much to its own dignity.

MR. WILLEY. I beg to repeat that I shall exceedingly rejoice to admit the gentleman from this county to a seat on this floor. These precedents to which I am referred have happened since I left. In regard to the members admitted on certificate before I left, they were referred to the committee and received very rigid scrutiny and the facts reported back, and then they were admitted. I rose principally to ask my friend who presented this petition, whether he is acquainted with the signatures to it. I understood him to say he was acquainted with several of the parties; whether the petition, from his personal inspection appears to be a genuine paper? It is more especially with reference to this fact that I think it ought to go to the committee.

MR. WALKER. In regard to that, I am not so personally acquainted with the signatures as the citizens. I have not had business sufficient to do with those gentlemen to know their hand-writing when I see it.

MR. WILLEY. It occurred to me that perhaps the body of these signatures are in the same hand-writing. I do not know that fact.

Mr. Hagar rose.

THE PRESIDING OFFICER. The question is on the substitute of the gentleman from Wood for the motion of the gentleman from Kanawha. The substitute is to refer to the Committee on Credentials.

MR. HAGAR. My impression is the thing may be settled in a few minutes. I have considerable acquaintance with McDowell. I taught school three months and preached at the school house. So far as this applicant is concerned, he is "sound on the goose" question. I think I would know some of the names there. I would like to see the petition.

MR. DERING. I would much prefer that the petition be referred to the Committee on Credentials. I should have to vote against the delegate until we have it examined and reported on. It will be only a couple of hours, at any rate, until we shall act upon it, and that is but a short time to defer the matter. The Convention can certainly wait that long, until we examine it regularly, and then I suppose we shall all, with pleasure, vote for the admission.

MR. BROWN of Kanawha. I will withdraw the motion and let the case go to the committee.

Mr. Stevenson's motion to refer was then agreed to.

The Convention resumed consideration of the report of the Committee on County Organization. The Secretary reported the first sentence of the 6th section:

"The legislature shall, at their first session, by general laws, provide for carrying into effect the foregoing provisions of this article."

MR. VAN WINKLE. I will simply state that there will be, no doubt, some general provision carrying the Constitution generally into effect; and if so, why this clause would be transposed by the Committee on Revision. If a general one is passed, the Committee on Revision will leave this out.

The sentence was adopted, and the second sentence reported:

"They shall also provide for commissioning such of the officers therein mentioned as they may deem proper, and may require any class of them to give bond with security for the faithful discharge of the duties of their respective offices, and for accounting for and paying over, as required by law, all money which may come to their hands by virtue thereof."

The sentence was adopted and the third reported as follows:

"They shall further provide for the compensation of said officers by fees or from the county treasury; for their removal in case of misconduct or neglect of duty; for filling vacancies not herein provided for, and for the appointment when necessary of deputies and assistants, whose duties and responsibilities shall be prescribed and defined by general laws."

MR. WILLEY. I confess I do not understand that exactly: "They shall further provide for the compensation of the said officers by fees or from the county treasury." How is that?

MR. VAN WINKLE. Compensation from the county treasury.

MR. LAMB. Mr. President, I would suggest to insert the word "incompetency" after the word "misconduct," in the 79th line. It was inserted in another clause. Probably it had better be inserted here.

By general consent the word was inserted.

MR. DILLE. I would like, in the 73rd line, to have the word—

THE PRESIDING OFFICER. That sentence was adopted.

MR. STEVENSON of Wood. I only wish to suggest that the Convention this morning adopted an amendment in reference to these general laws and inserted the words "as far as practicable." Would it not be well enough to insert the same phraseology after "defined" in the 82nd line? I simply suggest that.

MR. VAN WINKLE. This clause only refers to the duties and responsibilities of deputies, and it strikes me that if we are going to insert the clause generally with reference to "general laws" occurs, we shall needlessly encumber our work. The idea that was adopted somewhat extensively in the present state constitution is that all these things shall be equal and uniform throughout the commonwealth; that they shall not be prescribed by special law, to make a deputy in any one county do one thing, and another thing in another county, but that they shall be uniform; and that thereby this constant application to the legislature to grind an axe will be rendered unnecessary or of no avail. As I have also stated before, if these general laws are found to operate hardly or imperfectly, they are always within the power of the legislature; and when a question comes up for amending a general law of this kind it is not only the parties who are seeking that amendment that are to be heard or whose views are to be considered on that subject but the representatives of all the counties in the State; and in that way, as it is to be only a general provision, you get, as it were, the united wisdom of the State and your chance for a good provision is much greater.

Now, sir, I do not think that in this there is anything to prevent the legislature passing laws of relief in certain cases. There is nothing to prevent the legislature making a special law for a special occurrence—for that which cannot be the duty and responsibility of every officer in every county, for instance, in the State. They cannot, of course, provide by general law; but if any such cases arise—and I cannot conceive of any—why, the legislature has it in its power to reach them; but it is that general duties shall be prescribed by general laws. I am afraid the conditional clause already inserted may defeat a good object; and I shall therefore be opposed, for the reasons I have stated, to introducing it here. I do not think the reason can be as strong in this case as they were in the other—the duties and responsibilities of

deputies merely. Certainly this can be effected by general laws. Now, if a deputy in any case has made himself liable in some way that seems to be unjust, I do not conceive that there is anything here to prevent the legislature from affording him relief. Therefore, I am unable to see any mischief to be apprehended from leaving the clause as it is; and then there is no necessity for a remedy.

MR. STEVENSON of Wood. I do not offer it as an amendment, Mr. President. I merely suggested that as we had introduced a phrase of that kind in reference to general laws, it might be well enough to introduce it here.

THE PRESIDING OFFICER. The Chair understood the amendment was offered; otherwise, the discussion was out of order.

The Secretary reported the last sentence:

"When the compensation of an officer is paid from the county treasury the amount shall be fixed by the board of supervisors, within limits to be ascertained by law; but no reduction of the compensation of any officer shall take effect during the term for which he was elected."

MR. VAN WINKLE. It is the intention of this that where an officer is paid from the county treasury, it will be a salary, in all probability, ascertained by law, as, for instance to say that it shall not be less than $300 but not more than $1,000, or any other amount—the legislature shall fix the limits, the minimum and maximum; and then, as the duties of these officers will be unequal in the different counties it is left to the board of supervisors to fix the precise salary somewhere within those limits. It was analogous to the case of the legislature providing that imprisonment, for instance, shall be not less than one nor more than five years, and the jury strike somewhere between those limits. The population of the counties is very diverse and consequently the duties of the county officers will be different in different counties, so it is necessary to leave the discretion somewhere to fix these salaries at greater or less sums. Well, now, the facts on which these things depend cannot be made known as well to the legislature. It is troubling them, also, with business which would occupy them much more time than it would the board of supervisors on the spot who know all about it; and as these supervisors are themselves the direct representatives of the people, it is I think safely confided to them. In the case of a prosecuting attorney for instance, where an allowance has been made, they may say the prosecuting

attorney shall receive not less than fifty nor more than three hundred dollars, if you please, and the board, knowing what duties are required of him—how much of his time is likely to be occupied in it—will fix the compensation somewhere within these limits. The limits being fixed will prevent extravagant salaries on the one hand, and, what is equally to be avoided, too diminutive salaries, on the other.

The concluding sentence, and the section, were in turn adopted.

The Secretary reported the first sentence of the next section:

"7. The civil jurisdiction of a justice of the peace shall embrace all actions of assumpsit, debt, detinue, trespass and trover, where the defendant resides, or, being a new resident of the State, is found, within his township, or where the cause of action arose therein, and when the value in controversy, exclusive of interest, does not exceed fifty dollars, subject to an appeal to the circuit court of the county; but a justice of any other township of the same county may issue a summons to the defendant to appear before the justice of the proper township, which may be served by a constable of either township."

MR. SOPER. I am requested to present a petition to admit Richard M. Cook to a seat in this Convention from the county of Mercer.

The paper was received and referred to the Committee on Credentials.

MR. LAMB. I move the insertion of the following as an additional section:

"The preceding provisions of this article shall not extend or be applied to any county, town or city, nor shall they be deemed to restrict the power of the legislature to correct and regulate municipal incorporations."

MR. LAMB. To come in just after the section as adopted. I have no particular anxiety to insert it just here, though as it applies to the preceding provisions of the article this might be a proper place. It may, however, be deferred until the 7th Section is considered. Perhaps it would be as well. I will not offer it now but after the next section.

MR. DERING. I move to strike out "fifty" in the ninety-third line, and insert "one hundred" as the limit of amount of which justice shall have jurisdiction.

MR. IRVINE. I am opposed to this amendment. I would greatly prefer twenty to a hundred. I see no reason for extending the jurisdiction of justices of the peace. The cases that are tried before justices of the peace are tried, Mr. Speaker, without any pleadings in the case; there is no issue joined in the case. In consequence of it, in a majority of litigated cases the cost is greater before a justice of the peace than when the case is tried in court. There is more danger of surprise. It is a more difficult matter to ascertain the facts on which the controversy turns. It is a more difficult matter to decide the questions of law arising out of the events. The pleadings, Mr. President, have the effect to simplify the grounds of the controversy, by keeping separate and distinct the questions of law and the questions of fact, and by reducing the whole controversy to an issue either in law or fact, thus narrowing down the controversy to some matters of law or fact that are affirmed on one side and denied on the other. In order to establish the truth of the propositions I have stated, I will first lay the foundation for the argument I intend making. (I would like to have a glass of water.)

(The sergeant-at-arms brought him one.)

Suppose suit is instituted, Mr. Speaker. We will suppose suit to be instituted in court. The plaintiff must state in his declaration the facts that constitute his cause of action. And we will suppose that the defendant undertakes to defend the suit upon its merits. He must do one of three things. He must either deny that the facts constitute a good and sufficient cause of action, which is done by a demurrer to the declaration. That raises the question of law, which is referred to the court, keeping the question of law separate from the question of facts. But suppose the facts do constitute a cause of action. If controverted by the defendant, then he must do one of two things: he must either join issue on the facts stated in the declaration, or, if not, the legal conclusion follows, unless that conclusion is repelled by alleging new matter. Well, we will suppose that he cannot controvert the facts stated by the plaintiff in his declaration. Then he must put in a plea alleging other facts. By so doing he admits the declaration—the truth of everything contained in the declaration; because if he denies the facts stated in the declaration he must take issue on them. If not, he is considered as admitting them, and if he puts in the plea, the facts in the declaration are admitted in the eye of the law. That dispenses with all proof of the facts stated in the declaration.

Well, when the same questions again recur on the plea, he must do one of three things. He must either demur to the plea or take issue on the plea or he must allege new matter for the purpose of repelling the legal conclusion that would follow. Well, suppose that the plea constitutes a good cause of action and the facts are true and that the plaintiff is under the necessity of alleging new matter for the purpose of avoiding the effect of the plea. Well, pursue this process as far as the replication to the defendant's plea for the purpose of laying the foundation for an argument. The plaintiff then comes in and in his replication he states the facts in his replication for the purpose of rebutting the facts stated in the deduction; and we will suppose that the defendant takes issue on those facts. We will suppose that we have constituted good cause of action and the defendant takes issue on these facts. There is no necessity then for any evidence establishing the facts stated in the plea, for the plaintiff by putting in his replication admits the truth of the plea. Then the greater part of the evidence is excluded from the case. The whole controversy is narrowed down to a single issue, to the facts stated by the plaintiff and denied by the defendant. Then all that is necessary is to introduce evidence for the purpose of proving or disproving the facts stated by the plaintiff in his replication. This excludes most of the evidence from the case. But then it avoids one effect of submitting the whole question without any issue to a justice of the peace. There is no danger of surprise, for the parties can with unerring certainty ascertain from the issue joined in the case the points of the controversy. The issue gives the facts upon which the whole controversy turns. There is no danger of surprise. But suppose that the whole controversy is referred to a justice of the peace without any issue in the case. The questions of a law and fact are all blended together. The party is more liable to be surprised at the trial. He has no means of knowing what are the facts upon which the controversy turns. And, in addition to that, there is not the whole history of the matter to ascertain the facts of the case, when the whole controversy is narrowed down to the facts affirmed by the plaintiff on the one side, and denied by the defendant, on the other.

This issue serves to guide the parties in summoning their witnesses. The whole attention of the tribunal that decides the case is concentrated on the particular facts that are affirmed on the one side and denied by the other. But if it was a trial before a justice of the peace, they would have nothing to guide them; no means of

ascertaining the facts upon which the controversy turned until they had first heard all the evidence in the case.

Now these pleadings do not at all change the character of the cases. It neither increases nor diminishes the number of the facts in the case. But it simplifies the grounds of controversy and greatly facilitates the administration of justice by keeping separate and distinct the questions of law and fact and by resolving the questions of fact into successive alternate statements, until the whole controversy is reduced to a single issue which serves to guide the parties not only in summoning their witnesses, but every question that is propounded to the witnesses is propounded in reference to the particular facts that are put in issue by the pleadings.

I am very much opposed to making war on our system of pleadings. This is entirely dispensing with our system of pleading in all cases between twenty and one hundred dollars. You would still dispense with it altogether, because a majority of cases do not exceed a hundred dollars. I remark that the amount of cost is greater; that it is not necessary when you have the issue joined in the case and the facts stated in the declaration are considered as admitted. The facts stated in the plea are considered as admitted. All the legal questions—the whole controversy—turns on the issue joined in the case. The jury is sworn to try that issue, and that is the only question to be decided.

Now, Mr. Speaker, this disposition to make war on our system of jurisprudence has proceeded, I think, from gentlemen who did not fully appreciate the system. It is a system of principles. They have a deep foundation in reason and in the nature of things. The process by which you are conducted to an issue is a beautiful, logical process. And when I speak of its being a logical process I do not use the word "logical" in a loose sense, but I use it in its strict and limited sense. For every pleading is a syllogism. The declaration shows the cause of action; the facts stated in the declaration are to constitute a good cause of action; the declaration constitutes a perfect syllogism of a major premise, or in other words the major premise, which is the rule of law, is understood or implied the facts stated in the declaration constitute the minor premise, and the conclusion is the third term. The same remark might be made in relation to the plea. The plea constitutes a perfect syllogism, with a major premise implied, which is the rule of law; and the facts would amount to nothing if the rule of law was not implied. The facts stated in the plea constitute the minor premise and the

conclusion the third term. Now you by adopting the amendment will entirely dispense with our system of pleading in all cases between twenty dollars and a hundred dollars. The justice of the peace, when you commence the investigation of a case, has nothing to guide him at all. There is no issue in the case. There is nothing to point to the facts on which the whole controversy turns. There is nothing to point to the legal questions on which the whole controversy turns; but all questions of law and fact are blended together and a complete state of chaos and confusion prevails.

Our system of pleading, Mr. Speaker, I regard as the most valuable part of our system of jurisprudence. It has been regarded in that light by the sagest founders of our system from the very commencement of it. Gentlemen ought to be cautious, as we are now about to embark in a great enterprise, how they strike a blow at this system, because we cannot tell where it will stop. If there are any sufficient reasons for dispensing with our system of pleading in cases between twenty and one hundred dollars, the same reasons would apply with equal force to all cases. I can see no reason for it. Our system of pleading is not the product of the wisdom and experience of one generation of men; but is composed of the accumulated wisdom of many generations. Mr. Speaker, I am very much attached to this branch of the law. It is the one that I took more delight in than any other branch, because I have never seen anything better adapted to any purpose than our system of pleading is to the purpose it was intended to answer. It is admirably adapted to the purpose of facilitating the administration of justice. But without this system, the parties would be always liable to be surprised; not only liable to be surprised, but it would be much more difficult to ascertain the facts when they did not know the facts upon which the whole controversy turns.

And I made another remark in my preliminary remarks, that it would be much easier matter to decide the legal questions growing out of the events when the evidence is offered and to know to what purpose it is to be applied. It is an easy matter to decide whether it is admissible, whether it is relevant or not, but if you have nothing to guide you no issue to test the question whether or not the evidence is admissible, without knowing for what purpose it is introduced, it is impossible for a justice of the peace in trying a case where there is no issue in many cases to tell for what purpose the evidence is introduced.

With these few remarks and for these reasons and many others I might assign, I am opposed to this amendment.

The hour having arrived, the Convention took a recess.

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AFTERNOON SESSION.

MONDAY, JANUARY 20, 1862.

The Convention reassembled at the appointed hour and the President took the chair.

THE PRESIDENT. When the Convention took a recess it had under consideration the report of the Committee on County Organization the immediate question under consideration being the 7th section, and the amendment offered by the gentleman from Monongalia, to strike out "fifty" and insert "one hundred."

MR. DERING. It was with great diffidence that I could bring my mind to the conclusion to offer any amendment whatever to the able report of the Committee on County Organization; and more particularly, sir, was I diffident about offering any amendment to the section under consideration from the fact that that section pertains to the profession of the law; and as a majority of that committee, sir, is constituted of lawyers, it was with great diffidence that I offered the amendment to the section under consideration. But, sir, believing it to be my duty as one of the representatives from Monongalia county, I screwed myself up to the sticking point. And permit me here to say that I read the report of that committee with great pleasure; and although it will produce an entire revolution in the whole affairs of the State, in every county of the State, in reference to our mode of doing business, yet sir, I could wish that the very able and instructive explanatory remarks of the chairman of that committee could go with this report, if it is incorporated in our organic law, to the people. It would be of value—of great service—to them, sir, in carrying out, and in the practical working of this report should we adopt it. I listened, sir, with pleasure to the remarks of the gentleman from Lewis on this amendment. I was not surprised when he opposed it. I gave him all the attention I was capable of, sir. I cannot follow him through his elaborated legal course of argument. I make no pretension

to be any part of a lawyer; but, sir, there were one or two items in his remarks that I may be permitted to advert to as I pass along. He took the position, sir, that if offering this amendment we were making war on the system of jurisprudence. Not so, sir, so far as I am concerned; for I consider a well regulated system of jurisprudence one of the greatest safeguards of the citizen.

MR. IRVINE. System of pleading, was my argument.

MR. DERING. I say, though, that I regard a well regulated system of jurisprudence as one of the greatest safeguards of the citizen for the protection of life, property and character. He furthermore said, sir, that a magistrate—and it is an argument I can appreciate and understand, having no particular legal lore about it in the trial of a cause, could not have any guide before him. Now, I trust the gentleman will permit me to differ with him. In Virginia and in many of the states, magistrates have judicial jurisdiction as well as law jurisdiction. He has this before him, the great principles of justice to subserve and mete out to the parties. That after all is the great law that should control all magistrates as well as judges. He has the great principles of justice to mete out, sir. If he adheres to that, if he makes justice his polar star, if he is a man of ordinary intelligence, he will arrive at proper conclusions in most things that affect his adjudication. Now, I owe a man a hundred dollars and give him my plain note of hand payable after date. If he fails to prove any payment whatever and appears before the magistrate to defeat me from the collection of my just and honest due, what plea can he make, what guide does the magistrate need; what law to prevent him from giving justice in his decision? The plain matters of fact have been placed before him, and his only object should be to do justice to the plaintiff; and if he finds no plea of payment put in whatever, or if he fails to make good his plea of payment by proof, the plaintiff is entitled to a judgment. Sir, he needs nothing but the plain principles of justice to guide him there. So in many transactions that will be brought before him, even if the jurisdiction should be extended to one hundred dollars. Why, sir, the principle will apply to a case of fifty or twenty. The same arguments will apply to them that apply to a jurisdiction of a hundred dollars. And, sir, if the defendant feels himself aggrieved, that he has not had justice done him by the magistrate, he has an appeal to the circuit court. He has his remedy there so that there can be no injustice done him on account of the tribunal that tries him. In several

of the states, when justices have jurisdiction varying from twenty to one hundred dollars—

MR. WILLEY. I would ask the chairman whether that jurisdiction applies to cases of trespass?

MR. VAN WINKLE. That word "trespass" got in accidentally and was not intended by the committee.

MR. STUART of Doddridge. I rise to a question of order. This is a question that was specially referred to the Committee on the Judiciary, and it is made one business of that committee to inquire into the jurisdiction of justices. It seems to me we have taken it out of its proper place in considering it in this report.

MR. DERING. I presume I am in order as the section and report has been acted upon until we are nearly through it and it may as well be met in this connection as any other. In Michigan, sir, a single justice of the peace has jurisdiction to the amount of one hundred dollars, and has concurrent jurisdiction to the amount of three hundred and up as far as five hundred. I admit, sir, there are other states in like condition but in many of the states the jurisdiction is left by their constitutions to be prescribed by their legislatures. But in some of the states they have limited and in others extended it, varying the jurisdiction from twenty up to one hundred dollars. In our state, Virginia, our legislature has been increasing the same from twenty dollars up to fifty and from fifty to one hundred dollars. It is now one hundred dollars. The jurisdiction of a single magistrate is made to go as far as one hundred dollars. Now, sir, I have never heard any complaint of injustice on account of the jurisdiction of a magistrate reaching one hundred dollars; not a word. I have never heard in all my experience and observation and knowledge of anybody that complained of any injustice on this account. There are quarters where I might have heard complaint if I had sought for it, but I have never heard a single word. The people, then having enjoyed this right in Virginia, the legislature in their wisdom having enacted that the jurisdiction of a single magistrate should amount to one hundred dollars, we should let it be where the legislature has fixed it and incorporate a clause in the Constitution of the State of West Virginia placing it at that amount. Now, sir, I hold we ought to be very careful how we rob people of rights that they have enjoyed. They have enjoyed this right; and having enjoyed it for so long a time, will you deprive them of that right—take it

from them? It seems to me if you do you will have the maledictions of an incensed community on you and the country would not justify any such robbery of their rights.

Again, sir, I am in favor of making justice as cheap as possible. I am in favor of throwing off all the guards that the lawyers may throw around it, of preventing them arguing before their courts, of putting in pleas, staving off and all that sort of thing. Why, sir, if a man goes into court and his client is disposed to be a little unruly he may have it staved off for an indefinite length of time and men thus deprived of their property and almost destroyed. I hold it is the duty of this Convention, so far as they can consistently, to strengthen the great principles of justice, to promote justice by all means possible; to give to the people all the rights they have enjoyed and as many more as they are entitled to. I trust, sir, that this Convention will see the thing in the proper light and that they will give to the people the right to bring this up to as high as one hundred dollars. Then the defendant, if he considers himself the aggrieved party, if he thinks he has not had justice done him, can appeal to the circuit court, and there perhaps he may think he will have a better chance to obtain it. But, sir, there are very few cases of appeal on plain business transactions. Yet it seems to me it would defeat the ends of justice almost entirely if you take this jurisdiction out of the hands of the magistrates. There are many plain transactions between neighbors that amount to one hundred dollars. Indeed, most of the small litigation of the country is under that amount. Will you deprive the people of the right of seeking a magistrate and there obtaining justice? Or will you put them under the necessity of going to a lawyer and feeing him to get what is their just and honest due? Prevent them from a speedy collection of their debts? Throw it into court, where they would be kept out of it an almost interminable length of time? I trust, sir, that the sense of justice to the people, rich and poor, will bring this Convention to the conclusion that the amendment should pass.

MR. STUART of Doddridge. I desire to know whether if this passes whether the word "trespass" is to be stricken out. If the word is to be stricken out, I am for extending the jurisdiction in civil cases.

MR. VAN WINKLE. No, sir, the word "trespass" is there by mistake.

MR. STUART of Doddridge. Is it to be stricken out?

MR. VAN WINKLE. It ought to be.

MR. SOPER. I apprehend not; the gentleman is mistaken.

MR. VAN WINKLE. Thinking it would be better, I changed the language and accidentally left "trespass" in.

MR. STUART of Doddridge. I do not know whether it would be proper to offer such an amendment.

MR. VAN WINKLE. It being an accidental error, like my friend, I suppose by general consent the committee will be allowed to strike it out.

MR. SOPER. I think the chairman of the committee is under a misapprehension. In the draft he will find we had actions for assumpsit, debt, detinue and trover. I suggested to him the propriety of adding trespass. I am serious in it, sir, and will give my views at the proper time why I think it ought to be retained.

MR. STUART of Doddridge. Is it in order, then, to move to amend by striking out "trespass"?

MR. VAN WINKLE. Not now, I suppose. I will move to strike it out at the proper time.

MR. STUART of Doddridge. Yes, sir, but it might not be stricken out and you want to get me to vote on another amendment.

MR. DERING. I withdraw my motion, for the present, then.

MR. STUART of Doddridge. I move, then, Mr. President, to strike out the word "trespass," in the 2nd line.

MR. SOPER. That word was added, I think at my suggestion, and I will state to the Convention my object in having it placed there. I would have been satisfied myself if the report had generally authorized the legislature to confer on magistrates such civil jurisdiction as they saw fit; but when I found that actions were to be designated in the report I caused this word "trespass" to be inserted. I see gentlemen here apprehend that by introducing that word that they include all actions of trespass. I do not mean any such thing, sir, and before we get through with this section I will introduce such power of restriction, or giving the legislature such power, of restricting the exercise of the jurisdiction of magistrates

under this section as I think will be safe and proper. Now, sir, I do not mean that a justice of the peace shall try an action of trespass where the title of land shall in any wise come in question. I exclude it entirely, and that power will be given if not named in this section to the legislature in order to secure it. I do not mean, sir, by giving them jurisdiction in actions of trespass that they shall try cases of assault and battery or false imprisonment or anything of that kind; but I do mean this, sir. If my neighbors' hogs come in and destroy my garden, I want to have a remedy. Or if my neighbors' cattle got over into my field and destroyed my grain, I want to have a remedy without going into the circuit court.

MR. VAN WINKLE. This is only the civil jurisdiction of a magistrate. He would still have jurisdiction of trespass as a criminal offense.

MR. SOPER. I know, sir, but I am not seeking to get a remedy for a criminal act. It is a civil act of trespass. Now, sir, a man who is on my land, if you please, takes off anything without my consent. True, I waive the tort and bring an action of trover: I can only recover the actual value of the property. But if a trespass is committed on my land, my action against him is a civil remedy, to recover damages, and it will be discretionary with the court and jury to make him pay what we usually call summary money. Whereas, in the other, I could only get the value of my property and interest on it. Now, why should not justices of the peace have jurisdiction of this kind? We hear almost constantly of neighborhood controversies, and what is the result? Why, one neighbor is injuring the cattle and hogs of another; trespassing upon him; killing them; quarreling about it and making a great deal of disturbance, and probably getting into assaults and batteries and various other difficulties. Now, sir, a man takes your property, if you please, without your consent, or he goes on your premises without your consent, or he runs against you when you are on the public highway and breaks your wagon or whatever you are riding in; commits any action of tort of this kind by which you sustain damages, why should you not bring the case before a justice of the peace and recover your five or ten dollars for it? Can any gentleman tell me? So that when gentlemen suppose that in putting the word "trespass" there is to drag before magistrates the various actions I before named—assaults and batteries, false imprisonment—all that will be excluded; the legislature will take that away. Power will be given here to permit the legislature to

do so. If I understand our present law on this subject, if I go into the court about it, if I do not recover ten dollars damages, why, I cannot maintain my action; I have got no remedy. But if I go there, then it requires the certificate from the judge in certain instances to entitle me to cost—a certificate that this breach or act was done, and something of that kind.

But, sir, I will repeat again, and then leave it for the consideration of the Convention: it is to give a remedy for these damages that I have named by going before a magistrate to have him assist in recovering the debt or claim I might have. I would have no objection to restricting the magistrate here as to the amount; restrict it to $20 if you please in these small cases. But I hope we shall not say that when a man has suffered an injury he shall not have a remedy for it.

MR. STUART of Doddridge. I must take things as I find them. Whether the gentleman from Tyler might be able to modify it to suit his views, I do not know; but if this section is modified as it stands, it may be modified, and it may not. If he has any amendment to offer I should like to see him introduce it.

MR. SOPER. I will tell you what amendment I propose.

MR. STUART of Doddridge. I will withdraw the amendment.

MR. SOPER. I wish to add at the end of "trover," "and such other matters, with such restrictions as may be prescribed by law." I will explain what I mean by "such other matters" besides those actions which will be named. If this is not broad enough—

THE PRESIDENT. Does the gentleman from Doddridge withdraw his amendment?

MR. STUART of Doddridge. I was very anxious for the gentleman to indicate what he proposed; but he only makes it worse. He gives additional power to the justices of the peace. I will insist on my motion to strike out the word "trespass." The section now stands that a justice of the peace has jurisdiction in all matters not exceeding a hundred dollars. As the gentleman from Monongalia remarks, on actions of trespass a great many legal questions arise; and I think justices are totally unprepared to decide questions of that kind. Besides, sir, men having cases litigated to that amount and cases of trespass would always want a jury. I see no provision here for giving justices of the peace a

jury; and I would be opposed to that anyhow. Therefore, I think we had better strike out this word and consider what further jurisdiction we would give to justices of the peace. I cannot vote for it at all in its present form.

MR. VAN WINKLE. I certainly misunderstood the wishes of the gentleman from Tyler in regard to the insertion of this word. I may be incorrect in my recollection of how it got there, or I may have been overruled in inserting it; but certainly it was not my wish or intention that actions of jurisprudence on which bounds or titles of land come in question should be tried by a justice of the peace. I am therefore in favor of the motion of the gentleman from Doddridge to strike it out. Then I apprehend, sir, that what is left as the jurisdiction of a justice of the peace in the country will be perhaps as far as we ought to go. These actions are all plain—those that will be left here and enumerated and can all be tried in a summary way without any difficulty, and will not, I think, in any case, require those proceedings of which the gentleman from Lewis spoke. I think his argument was rather unfortunate in this, that for the last twenty years—I may say for 40 or 50 years—the tendency of the legislation of Virginia has been to simplify this matter of pleading. The tendency everywhere has been to simplify it. The old system of pleading was abolished several years ago in Massachusetts and in New York. Several western states have followed suit; and the reform party in England—that is, the party that are in favor of reforming their law, at the head of which is Lord Brougham, who has been indefatiguable, are in favor of the same thing. It is not worth while, I am aware, to address to other than legal gentlemen here any particular remarks about pleading. It is a matter too indirect, that is, what is technically called pleading; I mean in bringing the case, of course, to an issue. That is all that pleading does. It may consist of syllogisms, sir, but I apprehend that one end of them is a fiction, somehow or another. Now, sir, in the cases here that are presented for adjudication of justices of the peace in the country, there is scarcely possible but one issue, at any rate in 99 cases out of every 100. An action of assumpsit; the technical reply is, non-assumpsit. Is the charge one of promise? He says he did not promise. That is all that is to be tried. A promise to pay a certain sum of money; the question is whether he promised or not. In debt: there is very seldom anything can come up there before a justice of the peace except the question of payment. I apprehend that any person who

held a note or execution which was likely to be disputed would not go before a justice of the peace. Well, so with the other actions of detinue and trover. They may almost be considered money actions. One party has come into the possession of the property of another. A suit is brought for the value of it, or in detinue to recover the identical property back. Now, these are all summary actions that require, as I think, no pleadings. It strikes me, therefore, sir, that if there is no advantage in this technical pleading nothing is to be lost in these cases that are confided to the justice of the peace, because they are not cases in which this technical pleading is of value in any case. I was reminded at the recess of what has been omitted from this report—ought to come before the committee, I believe, but it certainly was my intention to have said something on the subject. I was reminded that by the Constitution of the United States every case at common law where the value in controversy exceeds twenty dollars there must be necessarily a jury. My own opinion is that that clause has nothing to do with the courts of the states. It says such matters shall not otherwise be examined in courts of the United States. If it had meant states, it would have said courts in the United States. But the more recent interpretation is of all such amendments to the Constitution, that unless specially applied to the states in direct terms, or the people themselves in so many words, that they are not binding on the states. However that may be, sir, I believe full concurrence everywhere has been paid to it and provision made for trial by jury where the matter was over $20. I beg to read a clause which I will offer at the proper time:

"Either party to a civil suit brought before a justice of the peace when the value in controversy or the damages claimed exceeds twenty dollars, and the defendant in such cases of misdemeanor or breach of the peace as may by law be cognizable by a single justice, when the penalty is imprisonment or a fine exceeding five dollars, shall be entitled to a trial by six jurors, under such regulations as may be prescribed by law."

I apprehend the introduction of a provision of that kind would still further involve the objections to a jury. But if either party chooses to demand a jury, then he has it, in the specified cases. That jury I have fixed at six men instead of twelve as being less expensive. Yet I believe that jury being unanimous is as likely to do justice as twelve.

I trust, sir, that the amendment to strike out "trespass" will prevail. While we should very properly seek to relieve the circuit

courts of all this matter-of-course business, or as much as we can consistently while it is desirable for the convenience of the neighborhood that the business of the people of a township should be as far as practicable be transacted within their township, or by a justice of the peace, where the operations are much more summary than in a court of record, however, sir, there is a line that should not be over passed. If we undertake to impose on our justices interests which are very complicated, which require a tedious examination of witnesses, and especially those interests which, as in the case of trespass of land, would require an investigation of written documents, admissability of which must always be decided on strictly technical grounds, we are compelling our justices to try matters of which we are by no means certain they will be competent. Where a question arose on the admissability of a deed or will or other legal writing, a dozen or a thousand questions may arise, we are so far complicating the business that it is not likely to be decided for a great while. The trial would be long and exceedingly tedious and the decision perhaps would not be satisfactory. It is precisely the case where we want the acumen of the learned judge, aided by intelligent counsel and jury. I think, therefore, that by confining the jurisdiction to these plain actions we shall rather tend to serve the people than by throwing other actions which are more complicated into the hands of the justices of the peace. They may be overrun if such actions go before them.

MR. SMITH. I came in the midst of this discussion, and if I understand the amendment it is that the word "trespass" should be preserved.

THE PRESIDENT. The motion is to strike it out.

MR. SMITH. Well, I think it is a very proper motion. It would seem to me to be a remarkable fact that such a jurisdiction as this should be given to a magistrate. It does seem to me that the mover does not perceive the extent of the power it grants. Why, sir, what is an ejectment but a trespass? Every action of ejectment is nothing more nor less than a trespass in a given form. Every action of unlawful entry is nothing but a trespass; and here you propose to say that a magistrate shall try a question of trespass involving the title to any amount of land you please and introduce any amount of written testimony that you please. I know one case that was 31 days in trial that under this law a magistrate might try. Why suppose he would have to summon a jury for

forcible entry and detainer; the case would have to be tried by him. Actions of trespass for intrusion on land, where another party intrudes on the title or possession of another. He may bring his action for it. The other may plead *laborum tenendum*. The very moment that is introduced the whole title of that land is in doubt. Such a state of things as this cannot be tolerated. It cannot be submitted to for a moment that a magistrate should have such power of jurisdiction as this. And again, in trespass there are some of the most difficult cases we have in the law. Here it is; vindictive damages may be given. Vindictive damages I have known as high as ten thousand dollars. The magistrate is to exercise all that power and jurisdiction! This will not do; it ought not to be, and I am really surprised that it is seriously urged to give such sweeping power and jurisdiction to a magistrate. As this question was once decided in general court—I do not distinctly recollect the case, but I think it was one that went up from Winchester—in which a suit was brought for four dollars worth of quit-rent on land; and the action was maintained by the court below, and it went up on some proceeding to the superior court and thence to the general court. The general court says that a magistrate has no plea of land whatever. That is an old fixed and established rule of law, as old as the common law, that a justice of the peace shall not have pleas of land at all. It is a sound principle and a just principle. I hope it will not be the pleasure of the Convention to sustain a proposition fraught with such mischief as this would be.

MR. SOPER. The gentleman did not meet this question fairly. I stated, sir, when I was an advocate for having action of trespass maintained here that I did not intend to have it apply to any of the cases which the gentleman from Logan has just named. This, sir, is not a new proceeding. It may be to some gentlemen but not to me. I have been accustomed to it all my life, and I intend to have it applicable to cases of this kind. Here are two neighbors who have divided their line fence. One neighbor keeps up his fence, and the other neighbor suffers it to go to decay and fall down, and the cattle of the latter get over and damage the crops of the other from one to twenty-five dollars. Where is his remedy?

MR. SMITH. If he should offer a plea of *laborum tenendum*, will not the whole title to the land be involved?

MR. SOPER. If he put in that plea it would be by giving bond and surety to indemnify him in case the party saw fit to bring his

case in the circuit court. And what additional security would the plaintiff get in the case? Why under the statute, if that case was put in, he would recover triple damages. That will be the way of it, sir. Now I state that over again, so the gentlemen will understand it. I bring an action of trespass for coming on my land and destroying my personal property, destroying so many bushels of corn, if you please, or taking off so much wood, or anything of this character. The defendant comes before the magistrate and puts in a plea of title. That plea would oust the magistrate of jurisdiction. In putting in that plea of title, the legislature ought to require him at the time he puts it in to tender a bond with sufficient surety to the plaintiff that in case that suit in the county or circuit within so many days he would appear there and interpose the same plea, namely, title; and in case he failed, he would pay double or triple the damages. Now, sir, where would be the safety? Why, sir, it would prevent a man putting in a false plea to oust the justice. And then, sir, the matter would be settled before the justice as any other case is settled, according to the evidence and the law.

Why, here we are to have but one court in this State—a supreme court and a circuit court. These are the only courts we are to have; and are we to take and crowd these courts with cases which may be settled before a magistrate below just as well as not? Why, from the argument of some gentlemen, the chairman of the committee who reported this provision if I understand him he means by it that a justice shall only try cases where there is no defense. Why you may as well give the justice in that case jurisdiction to ten thousand dollars. Well, now, sir, he says the report states that justices shall have jurisdiction in action of assumpsit upon a contract. Some of the most litigated cases in our courts arise upon contract. Take a building contract; a man undertakes to put up a building for you according to the written statements and measures, extras and design. There is something wrong in material or work in various ways. Action is brought before your justice. Defendant appears there and it is litigated, inch by inch. Not so in an action of trespass. If you can prove that his cattle destroyed your property, or he did it himself, or it was done by his direction, it is the simplest action in the world, unless he interpose this special plea which would oust the justice from jurisdiction. If he does this, I told you where the remedy would be.

I would submit to the Convention that this is one of the most useful provisions, and all these great actions that gentlemen have spoken of can be excepted from the jurisdiction of the justice, and

rightfully, too. Action of ejectment, assault and battery, false imprisonment, where the title of land comes in any wise in question—all these cases may be taken away because the wisdom of the law seems to think that they ought to be tried in the most intelligent courts we have got. But the simple coming and destroying your property, why that is one of the cleanest actions in the world and there ought to be a remedy for it and that is all I intend to give here when I want that word "trespass" retained as part of the jurisdiction of the justice. It is to meet cases of the kind I have named. I say to you, gentlemen, give the party a remedy for these plain and aggravated cases or little injuries which produce neighborhood quarrels and difficulties. It is with a view of having them settled in the neighborhood that I have put in this word.

MR. LAMB. I shall vote for striking out the word "trespass"; but I must say to the Convention that I think these details are all improper to be put into a constitution. Why should we attempt to regulate all this matter in the Constitution, which from its own nature is irrepealable, where if we commit an error the error is irretrievable? Are we not interfering with the proper sphere of the legislature? Is not this whole matter a legislative matter and not properly a matter for constitutional regulation? If the legislature is prescribing the forms of actions which may be brought before justices of the peace, in prescribing the duties of constables and their authority, in prescribing the jurisdiction and power of one of these officers or the other, has committed an error or an oversight, it is easy to be remedied. If we commit one, it is, to say the least, a matter that cannot be very easily corrected. I should be much better satisfied to see here, in place of this section, and the succeeding one, a summary provision that the powers and duties of justices and constables should be prescribed by law, and stop there. If we do attempt to regulate all this matter, we will find that we must go on from one detail to another; one provision will necessarily involve the necessity of inserting a half dozen exceptions, and we must go on, if we do it properly from one provision to another, with one exception and another, until we insert into our Constitution the whole of the laws in regard to justices and constables. Is not this almost the necessary result? The gentleman suggests one provision very proper in itself as a general provision, but it immediately becomes necessary to engraft an exception on it; and so one detail will necessarily lead to another

until you must have almost a code of laws in your Constitution on this subject.

I have been examining, with reference to this matter, the constitutions of the several states. Our own Constitution contains a provision something like I suggest. Our own Constitution says, simply, "The power and jurisdiction of justices within the limits of their respective counties shall be prescribed by law." The Constitutions of Louisiana, of Michigan, of Arkansas, of Georgia, Mississippi and Alabama, all contain a provision fixing the limit of the jurisdiction of justices by a specific sum. The constitutions of all the other states, if my examination of them is correct, contain the simple provision that the jurisdiction of justices of the peace shall be regulated by law. The gentleman from Monongalia referred to the Constitution of Minnesota. That constitution contains the express provision that jurisdiction of justices of the peace shall be regulated by law; but a further provision that their jurisdiction in civil cases shall not exceed one hundred dollars. There is only that limitation on the power of the legislature. But a very large majority of these states have not attempted in any way to regulate these details. It does strike me that there is a broad distinction between the proper sphere of legislation and the making of a constitution; and there is, on that account, a grave objection to this whole section.

MR. VAN WINKLE. I think, sir, the Convention will pardon me a few moments in reply to the gentleman from Ohio. If he will advert to the fact that the jurisdiction of justices has common-law matters to a great extent; that the jurisdiction they have exercised in Virginia has been under a different state of things, a different organization of counties from that which we now propose; if he will reflect that we are changing in other respects as well as in this; that we are altering, abolishing, the county court in which many functions which were done by justices in the country and elsewhere were discharged—he will find that there is some reason at least for inserting these specific provisions in the Constitution. I admit that matters that are purely matters of legislation ought not to be inserted in the Constitution, and that in the practical application and carrying out of the Constitution the legislature should be left free to act, at any rate, within certain limits. But where we do anything to introduce a change in the very Constitution of these offices—these justices of the peace—it appears to me unavoidable

that the terms of that change must be expressed in the Constitution itself.

And, now, sir, if you say leave all this to the legislature, then why not strike out the whole report of the judiciary committee and leave all that to the legislature. I apprehend we go no more into particulars than the judiciary does, and I apprehend we go no more into particulars here than we do in many things that have been inserted into this Constitution with the entire approbation of the gentleman from Ohio. In reference to the legislature, sir, in the report of the committee of which he is chairman, there are certainly a great many things that are rendered necessary by the changes that we propose in the Constitution of the State. If we make constitutional changes, those changes must be embodied in some way in the Constitution; and I do not think these sections are obnoxious to the charge he brings against them. The rule is broad enough; either leave everything to the legislature and go home, or else we must define, to some extent, the powers and duties of the legislature in reference to these subjects, on the one hand, and the powers and duties of the offices which we establish, on the other. This provides what the civil jurisdiction of a justice of the peace shall be. Suppose we leave it here without any provision. The legislature may perhaps almost render your circuit courts nugatory or may so cripple them that an amendment to the Constitution would be necessary.

One argument I used when on the floor before in favor of the proposition of the gentleman from Monongalia to raise the jurisdiction to one hundred dollars in these plain cases—not, I would say to the gentleman from Tyler, in which there is no defense but cases in which there is a simple issue—to raise the jurisdiction of these magistrates, the object being to relieve as far as possible these circuit courts. We are to have four courts in a year instead of fourteen. We are endeavoring to be as economical as possible, not to create too many judges; and we will find, I think, that if we can relieve these courts by imposing duties on the magistrates in the country, in some cases of which, with the aid of a jury, and some without, they are entirely competent to deal, we are rendering benefit to the people of every county of the commonwealth by so doing.

Now, sir, the necessity for these very provisions grows out of the existence of townships, and so grows out, remotely, of the abolition of the county court. If these had been retained—if the county court had been retained—it would be easy to say jurisdiction

should be the same as under the former laws. But the jurisdiction of the justices was co-extensive with the county court in all civil suits; and I think gentlemen will find that there is a very large majority here who deem that the interests of the people would be greatly promoted by confining these magistrates to their own townships, bringing justice, as it were, to every man's door. Now, sir, how is this to be done without a constitutional provision? To me it is impossible. These officers, with their civil jurisdiction should be confined to their townships. Then we follow with the criminal jurisdiction should be confined to their townships. Then we follow with the criminal jurisdiction; and, notice, it is made as mere conservators of the peace at least co-extensive with the county. He shall have the power to suppress a riot or breach of the peace. And having confined his civil jurisdiction here by one section, necessarily, as I think, we have to put in the other section saying that in criminal cases it is not so confined. Here, again, have these constables been county officers. I apprehend very few gentlemen here wish the civil jurisdiction of a constable to be co-extensive with the county. If you can confine small courts to a township, you want the constable confined in the same manner. How will you do this? If those here who represent the people are not in favor of these changes and restrictions that are to be placed on the jurisdiction of the justices and constables, why, of course, this section will be taken out; but if a majority of this Convention is in favor of these restrictions, how are they to signify it except by enacting it in the Constitution? I think gentlemen will find as this discussion goes on that there is a good deal of feeling on this subject. I do not mean excitement; but I mean conviction. It is a subject that has been studied and thought upon by most of the members here; and that in relation to it almost every member has an opinion which he would like to see carried out, and that a majority of these opinions will be in favor of this restricted jurisdiction. That is my impression. But unless this subject is brought to the knowledge of the Convention, how are we to ascertain what are the wishes of our constituents in reference to it? Or of a majority?

It strikes me, therefore, that the charge in this instance of endeavoring to crowd the Constitution with legislative provisions is not a sound charge. It strikes me that in view of the changes we are making, the changes we have agreed to make, with great unanimity, too, that these provisions are absolutely necessary to be inserted as a guide to the legislature. I have stated before that

throughout this report, the Committee on County Organization were willing to leave everything out from which inconvenience might possibly arise within the power of the legislature; that we are to set down in the Constitution what shall be the rule and practice that is to be incorporated in it and that the legislature is to carry out the details subject to that rule. But we must define, we must give a different status to the office of justice of the peace; change it from what is was under the former laws and under the county court law. But a great deal of our powers arise under the common law and will be enforced unless they are precisely restrained by this Constitution.

I think, therefore, sir, that the gentleman had better permit us at least to go on and amend this and see if we cannot make something that will be acceptable even to him; see when the wisdom of this Convention is brought to bear on it, when such provisions as may be superfluous are stricken out and other provisions that may have escaped the investigations of the committee are inserted —when the wish and will of the majority of the Convention is ascertained and we have altered and amended this and made it as perfect as it can be made—then it will be the best time to judge whether it is at all superfluous.

But I go back to where I started, that as we had already voted in a great and fundamental change in reference to our county organization, abolishing the county court and instituting a township system, that these sections are absolutely requisite in some form or other; that similar provisions—something on the subject, is absolutely necessary to be inserted in the Constitution.

MR. LAMB. Mr. President, I have not sought to embarrass the proposition of the gentleman from Wood. I have proposed none of my own. I made the suggestion I did rather as a suggestion to the friends of the measure than with any view of embarrassing it. I think that a provision such as I suggested to the plan of the gentleman from Wood will work better than it will work if he attempts to regulate all these details in the Constitution. I do not know that my remarks are in order as I made no motion in regard to it, but I hope the Convention will indulge me for a moment.

The gentleman's argument on that matter is that, as we are adopting a new system here these details are necessary; that to put the township system into operation it is necessary to have

these matters prescribed in your Constitution. Now, gentlemen, how is it where this township system is in operation? Look at the Constitution of the State of Ohio, and you have there the simple provision—and it is the whole that I can find on the subject—that the powers and duties of justices of the peace shall be prescribed by law. Look at the Constitution of Indiana; look at the constitutions in the eastern states, where this township system is in full operation, and have they attempted to encumber it by these numerous details in the constitution at all? They leave the matter with that simple provision that "the powers and duties" of these officers "shall be prescribed by law." I am I trust as fully impressed as any man with the ability of this Convention to adopt a set of regulations on this subject. I know they could do it as well as a legislature could do it at the present time; but our Constitution is to be unalterable; we have to adopt regulations here in the Constitution which we hope, at least, will continue to govern this Commonwealth of West Virginia for 20 or 50 years to come. Can we adopt regulations now that will operate 50 years hence as understandingly, as judiciously, with as much probability that they will suit the circumstances of our people then existing as the legislature which will meet 50 years hence, meeting in the midst of the circumstances for which they are to legislate, with all the light before them that will enable them to fit their laws to the condition and circumstances and even prejudices of the people? For even such matters are proper to be considered both in constitutions and in the enactments of legislatures. I do not think that the change we propose to make in the system here renders these things necessary; and I am confirmed in this by finding that in every state where the system which the gentleman from Wood desires to introduce is in full operation they have left this matter, as I would prefer, if I do not propose—as I would prefer to leave it—to the Legislature of West Virginia, which can act from time to time to suit the circumstances and emergencies which may then surround them.

MR. STEVENSON of Wood. I propose to add but a very few remarks on the amendment of the gentleman from Doddridge. I do it as much for the purpose of bringing the Convention back to a recollection of the fact that that is the subject before it, as the matter has been extensively discussed, as of contributing anything to the discussion of the amendment. I may say this, sir, that this word, "trespass" does not seem to be the word exactly that I would like to have here, and yet I do not feel like casting my vote to take

it out unless there is something preserved or offered here that will meet the difficulty suggested by the gentleman from Tyler. He referred to a class of cases which prevail in the agricultural regions of the State and always will prevail. Gentlemen who live in the country, as I do, can appreciate the force of that remark, such as entering on a man's land, taking off lumber; such as one man's cattle or hogs breaking over the fences of another farmer and destroying his crops; and a hundred other things of like kind that any gentleman who lives in the country can call up to his mind. Now, sir, they form a very large class of cases, of difficulties, in the country. Is there anything here that will give the justice jurisdiction in such cases? The gentleman from Tyler has said there is not; and at least the remedy given is not such as is desirable or would be equitable in cases of that kind. I have not heard any gentleman in reply to him undertake to answer his declaration in the matter.

MR. VAN WINKLE. I remarked once that the criminal jurisdiction of the magistrate over trespasses is not abolished, and that if a man's cattle invades the field of another man, he can get a warrant for trespass and put a stop to it, I think. I am not very recently from the bar, and I appeal to the legal gentlemen here to say whether the remedy is complete. The only thing the gentleman from Tyler wishes to retain is to sue him for damages, and that he can go into the circuit court and do.

MR. STEVENSON of Wood. Yes, sir: but it is not altogether fair to carry one's neighbor some 15 to 20 miles to the court house to state the matter of destroying his cabbage patch or a few acres of corn. I know they have that remedy; but if it is the only one, it is oppressive on the people. I understand the gentleman from Tyler to say that farmers do not wish to pursue, for reasons which gentlemen would feel the force of if they lived in the country; they do not wish to resort to the mode indicated by my colleague, in consideration of the perishable nature of their property and the danger of stirring up neighborhood antipathies and animosity; and hence they are left without any remedy.

Now, sir, I look at it, of course, as a practical question, because I am somewhat different from my friend from Ohio. He said at one time that he was no lawyer, although he had plead law a great many years. I may say that I am no lawyer, never plead law and I do not know that I ever expect to. But I look at this as a practical question; and if these difficulties can be met by the insertion

of other words such as: "and in such other cases as may be provided by law," or something of that kind, something that shall meet these difficulties, I should favor it. I shall vote to strike out this word because it is not the word for the purpose. But unless we can have something of that kind, the difficulties are such as the gentleman from Tyler suggests.

MR. WILLEY. It seems to me my friend from Wood seems to labor under a misapprehension; perhaps the Convention has a misapprehension. The argument seems to be conducted on the hypothesis that unless we include something of the kind in the Constitution, that these rights never can be obtained; that these wrongs never can be redressed. Why, not at all, sir. Now, I had hoped the gentleman from Ohio would have gone further and not only have "preferred" but "proposed" the amendment he indicated. It is one which I had prepared before he rose and intended to offer at the proper time. That will certainly give power to remedy the evils of which gentlemen complain. And, by the way, they are not so far without redress under existing circumstances as they may imagine. A man's hogs get into my corn-field and they destroy. I make out my bill for the corn, sue him for the value of it and recover it. He takes a tree off my land. I sue him for the value of it and recover it. We have in this a law for petty cases setting forth ample remedies. The whole design in giving this power to the legislature is to devise wise means by which actions may be had before justices in the country under certain restrictions to right these small wrongs. It can be very easily done. But if you are going to cram this Constitution full of every kind or mode of redress—if you are going to fix limits on the power of the legislature, now, henceforth and forever, let us abolish the legislative department at once and go on until we have legislated for all posterity to come, and fix in this Constitution every rule and regulation for the redress of every grievance, present and to come. Why, sir, what kind of a condition would we get into? Now, sir, I have a profound respect for the wisdom of this body, and especially for my own, but really I do not conceive that either this Convention or myself has all the wisdom in the world of this progressive age and era; and it is to be supposed the people hereafter would be competent to send to the legislature men who would be able to pass laws and regulations for the full redress of their grievances and the maintenance of their rights. If we incorporate in this Constitution certain powers that shall be exercised by the justices of

the peace, we involve, in addition to the difficulties indicated by the gentleman from Ohio another of a very serious character, we affirm by implication then that the Constitution having prescribed the duties and powers of the justices of the peace, that if it should be found necessary to enlarge these the legislature would not have authority to do it. We may wish to give them authority to redress grievances and to do the community service in some capacity or other not foreseen by this Convention; but by implication it may be considered that the legislature has not the power to do it. It may be said the powers of the justices of the peace are defined by the Constitution; the Constitution, the fundamental law of the land has regulated their powers and duties. Outside of that, as strict constructionists, we are not authorized to go. We ought to leave this entirely to the wisdom of the people, through their legislative agents, in time to come to shape these details as experience may prove necessary. It is perfectly competent for them to make a law that will accomplish the very purpose indicated by the gentleman from Tyler. We all acknowledge that there are these little grievances. Whether the general interests of the county will be better promoted by fostering and providing for keeping up this eternal petty litigation is a serious question in my mind: and it is on that very principle of policy that our legislature have hitherto refused, because they have said it is better we should suffer a little wrong than to keep the community by the ears all the time. But if it should be deemed otherwise better, in the wisdom of the legislature, and the people through their legislative agents, they have the authority at all times to do it; and they would give to justices of the peace whatever jurisdiction they see proper—jurisdiction of a thousand dollars if it is necessary. My colleague says they now have a jurisdiction of a hundred dollars. I do not know what this legislature has done. This legislature I understand has extended it to that. Well, now, is not there a practical exemplification of the fact that there is no necessity of incorporating such an unbending principle in the Constitution? There is practical exemplification of the wisdom of leaving this to the legislature, when even this legislature is extending the jurisdiction because they see the people demand it? Let the people have some discretion, through their legislative agents, hereafter in matters of this kind. Let us not impose binding rules and obligations on them from which they never can escape, however great the necessity for a modification of the rules. Circumstances may change; the condition of the people may change. Besides, sir, there is another rea-

son that I draw an entirely different inference of the necessity of caution here, from the fact that we are entering on a new order of things—an inference entirely different to my mind from that drawn by the gentleman from Wood (Mr. Van Winkle). We are entering on an untried state of policy. If we fix unbending rules in our Constitution and they do not work well, we will have no power to escape. The detriment, and the hindrance will be upon us because it will be a fundamental law over which the legislature has no control. Therefore, it does seem to me except where there is an obvious necessity for such constitutional legislation such matters had better be left to the discretion of the legislature, to be exercised under the exigencies which may arise and the indications of the necessity that will constantly present themselves for such kind of legislation. Let us see the operation of this new system, how it will work; how our new justices of the peace will get along. I am very willing to co-operate with my colleague in every way that will facilitate the administration of the law and that will cheapen it. I never heard—and if he were to apply to that other quarter he never would have got a complaint from me, because I am a lawyer. I shall expect my fees as a lawyer to be abundantly increased by any such legislation as this; and you have but to go into those states where this extended jurisdiction is, and I appeal to any member of this Convention who has had business to do there if the costs are not three-fold, sometimes five-fold, what they have been in Virginia and are now?

Why, sir, how is it you give jurisdiction to justices of the peace for all these cases under one hundred dollars? What is the result? We have pettifoggers enough; but go into these states where these justices have this jurisdiction of land cases and some little pettifogger is the right-hand man of the justice, some man who wants to get up this petty litigation, and the litigants are induced to go before this tribunal with ten-fold the costs they would have in our courts in the State of Virginia. I know this from personal observation, not from what I think would be the result, in states where this extended jurisdiction exists. Now in the plain cases of debt, where there is no defence, where there is no litigation, it is a hardship that a party should be saddled with an attorney's fee and all that sort of thing in court. Are you going to allow, or compel, these justices of the peace under this new order of things to discharge their duties without being paid for it? I understand that not to be the policy, sir. The new policy is to be, few officers and pay them for the performance of their duties. I

venture to say that when you collect your hundred dollars before the justice of the peace you will have as much cost to pay as you have now in a Virginia court of justice. It may facilitate the collection of it. I do not think that would benefit the majority of the people. It would not benefit me, and I fear the majority of the community are just like me; and instead of my colleague accommodating the community by placing these fast laws in the Constitution for the collection of debts, most people would be better accommodated by a little more delay if they could get it.

I am very willing to extend the jurisdiction of justices of the peace in all cases where there is no litigation. I do not care what amount you extend to. But where there must necessarily be litigation, as in case of detinue, up to a hundred dollars, you not only authorize and confine the trial right to the property detained but the justice has to fix the alternative value and one man has to decide on the value of all the articles of property that are detained. And so in action of trover. It does seem to me the better way would be to get rid of all these difficulties, to allow the powers and duties of justices of the peace and constables to be prescribed by law; and that as experience, propriety and necessity would indicate, the grievances which gentlemen allude to may be provided for. You may have remedies provided for these small actions in the country by extending the jurisdiction of justices or in some other way. The legislature will have ample power to do it; but if you incorporate these unbending rules in the Constitution, if you get a bad bargain you are bound to abide by it until the Constitution is amended. Sir, redress of every grievance which gentlemen have alluded to can be amply provided for by legislative discretion and authority.

MR. SOPER. One word in answer to the gentleman from Wood. He answered my objection by saying that where a wrong of the kind I had referred to should occur the party could go before a justice and pursue him criminally. Anything in the nature of a criminal proceeding does not compensate the party for the injury. It only punishes the individual and satisfies public justice. The county and state get the benefit of it, but the man who is wronged does not get redress. The gentleman from Monongalia says no need of retaining this word, because if a man destroys his personal property he can waive the tort and bring an action for the value. That is the rule of law I admit, yet it does not meet the case. It meets it so far as the actual value of the property is concerned.

My neighbor's property is destroyed by his negligent neighbor—not wilfully but carelessly if you please. He can waive the tort and bring the action of assumpsit to recover the value of the property. He loses his own time without getting any compensation whatever, and yet he does not effect a remedy. But if you retain this word, the magistrate in the exercise of sound discretion will say that the individual should not only compensate the neighbor for his time and trouble but then make him pay something by way of summary money. I think he ought to, sir. I think it is a wholesome provision, one that will operate better than to allow this civil action for trespass to be brought to correct these evils. Why, sir, if a man's property is destroyed by a neighbor who is not friendly to him, what will he do? Why, if the destruction is done by cattle he will be for injuring them in some way. They get into a fight and are brought before a grand jury, or the case comes before a petty jury; and thus a great and extensive injury is done.

No, gentlemen of the Convention, think of this thing seriously, if you are going to institute this new system and give jurisdiction to magistrates and compensate them so that you will get competent talent and so that they will be prepared to decide and determine these cases as well as you can get them determined in the circuit court, and it will be done in the neighborhood and before the excitement spreads far and wide and before other injuries have been committed.

Well, now, sir, as to the propriety of this report, I believe it will have most beneficial effect on the community at large. And while receiving the attention of gentlemen in this Convention who represent all the counties in this State, it will call their attention to various matters that will be broached here on which some have reflected and which the greater number will see the necessity of; but I am not willing to let this report go from under our hands until a clause is given to it giving the right to the legislature to give additional jurisdiction, and restrictions on the exercise of jurisdiction, as they, in their wisdom hereafter may see fit. Now, sir, there are a great many things not embraced in this report. Here is the subject of attachments; here are the matters between landlord and tenant. And there is another power not conferred on justices of the peace. It is this, sir, in cases between landlord and tenant. You have a tenant that occupied your premises and his time expires; and how are you to get him out? Suppose he be a man, for some cause or other—

MR. HALL of Marion. I dislike very much to do it, sir, but feel compelled to raise a question of order. I am very anxious to get at this question at issue.

MR. SOPER. I am not talking to the question, sir. It is merely answering such questions as gentlemen have permitted to answer without any proposition before the Convention.

THE PRESIDENT. The Chair is aware that there has been much latitude.

MR. VAN WINKLE. I will move that the gentleman from Tyler have leave to proceed.

MR. SOPER. I was remarking, sir, upon a branch which will be new to gentlemen here is Virginia where to remedy the evil I would give jurisdiction to the magistrate; and it is in a case now between landlord and tenant, whether at will or sufferance. After a third notice I would put an end to that tenancy. But I will take a tenant by the year and the time expires on the first of April; and your tenant is unable to remove and he puts you at defiance. How are you to remove him? Why, unless jurisdiction is given to the magistrate to that effect you have got to go to your circuit court and bring your proceedings for unlawful entry. It may be three months, if it may be tried then, or it may not. After all this you have got to go to a litigation of at least twenty-five dollars. Where would I remedy it? Why, sir, if the tenancy expires by contract at the end of the year, or a fixed period, I would get a summons from the magistrate requiring that individual to appear and show cause why he should not be removed immediately, and unless he could show some good reason I would authorize the constable to set him and his property out the next day, at an expense probably one, two or three dollars.

There are a great many other cases, sir, which will come up to be disposed of by magistrates and which ought not to go into the circuit court.

And now as to the wisdom of this report. It goes into detail; it calls the attention of gentlemen to what their jurisdiction will extend; what kind of cases it will probably embrace; and then by having a general provision in it that the legislature can restrict and add additional powers to this court, why it will be a safe one because although I would have been satisfied myself if there had been a general provision to this effect that the general jurisdiction of justices in civil and legal cases shall be provided by law, if there

had been a clause to that effect I believe it would have been sufficient. Then it would have given the legislature power from time to time to make such alterations as they saw fit; and I hope that provision will be annexed to it, while we have all these special cases designated in it with the general power given the legislature to regulate and control all those not specified.

Well, now another thing. The gentleman from Monongalia talks about expenses. We are, gentlemen, aware of what the expense will be. Comparing a judgment here in this district court and the cost in a court of record, why there is no comparison. Your magistrates will get probably a dime for his summons; five cents for his copy, five for his opinion; and the constable will get probably five per cent on executions that do not exceed fifty dollars and what goes over two and a half per cent for collecting. That is about all the expenses there are. Why, sir, extend the jurisdiction if you please to a hundred dollars and claims of that description will be collected for one-fourth of what they cost now. But if you are going to give them jurisdiction in these cases to a certain amount, why not embrace all the causes which will come legitimately in their power? Why not give jurisdiction over them? There is as much objection almost to the action of detinue as there is to trespass. I would not give a justice jurisdiction in a case of detinue at present, while I would give him action in trespass and trespass on the case. Now, that is not embraced. Why, sir, a case is there. I will take that of trading horses or the buying of a horse. A man commits a fraud upon you by concealing the defects of the horse or misrepresenting. What is your remedy? You suffer a damage of twenty or fifty dollars. Where is your remedy? You have got none if that clause passes there. Now, your justice ought to have jurisdiction of a case of that kind. He ought to bring the suit right in the neighborhood where the fraud is perpetrated, and decide it right away; not bring the party into the circuit court. That is not the way to administer justice in an enlightened community. Dishonest men and incompetent men you must expect. It will arise under any circumstances in a community. But these are exceptions to the general rule that we must remedy as well as we can. The remedy lies in the interest and intelligence of the people. There is where the remedy is. And in these townships, when gentlemen understand the mode and operation of this plan, that is said to be a new plan—when they see how it operates—the more they will advance in it, the better they will look at it and be prepared to carry it out. When the motion before

the Convention is upon striking out this action of trespass, I hope the Convention will not strike it out, because all these faults may be remedied by giving the legislature general power to restrict, and you ought to give the friends of this report the opportunity of making it what they think it ought to be, and after you get the whole of it before you if you think it will not work we will strike it all out and give a general clause that the jurisdiction of justices in civil and criminal cases shall be prescribed according to law. But before we have gone into a consideration and have had it properly investigated and discussed, I think gentlemen would do better to retain these parts of it until we get through or until the second reading of it, and then we will be prepared to say what will be proper for this Convention to pursue. I hope, therefore, the word will not be stricken out.

The motion to strike out the words "action for trespass" was put and it was agreed to.

MR. DERING. I now renew my motion to amend by striking out "fifty" and inserting "one hundred."

MR. STUART of Doddridge. I think the amendment to the amendment will perhaps save time; and I move to strike out the whole section and insert: "The powers and duties of justices of the peace shall be prescribed by law."

THE PRESIDENT. The Chair would be disposed to consider the motion of the gentleman from Doddridge as a substitute, and in that form would put the question.

MR. SINSEL. Mr. President, I am opposed to the substitute and in favor of the amendment offered by the gentleman from Monongalia; and it does seem to me that persons who have done business in court and before justices will see at once that it will be a great saving of cost to both the plaintiff and defendant if the motion of the gentleman from Monongalia should prevail.

THE PRESIDENT. The real question is, whether we ought to make these provisions or turn them over to the legislature.

MR. SINSEL. I would like to know, then, Mr. President, how we could make ourselves understood if we have not the right and privilege to show the practical working of the two systems? It seems to me in discussing amendments very frequently it is abso-

lutely necessary to refer to the whole subject. How can you do it intelligently otherwise?

MR. DERING. I move that the gentleman have leave to proceed.

MR. WILLEY. I would be very willing to accord that, but I think he is perfectly in order. He proposes to show that the substitute is not as good as that for which it is proposed to be substituted. He cannot avoid it.

MR. VAN WINKLE. I think the gentleman is certainly in order. The question is broader. A gentleman has a right to show that every line, every word that is proposed to be stricken out is there properly; nor can any one judge until they hear the gentleman out whether his remarks may be relevant or not. Our experience here has been that whenever a new subject comes up the first amendment to some extent affects the whole subject. After the merits of the whole case have been examined we go on and despatch the business rather than recapitulate all this debate whether on this precise question or another yet to be had. It strikes me by not restricting gentlemen too much we shall get through sooner.

THE PRESIDENT. But the substitute provides also that this jurisdiction shall not be given in any other form.

MR. HALL of Marion. I would desire the recognition of the Chair to say that I am as full of courtesy, really, as anybody, but I think we may be courteous to an extent here that may not be courteous to our people; and I think it is a matter of the utmost importance that we confine our debate to the question more closely than heretofore. And I must differ in that I presume to set up my judgment against others; but it is to my mind so plain a question that I would be allowed to say that as the question now stands the only legitimate argument that can arise upon it is whether we shall insert fifty or a hundred, or whether we shall leave it to the legislature. There is no part of the section under consideration but the simple proposition to strike out "fifty" and insert "one hundred." And I will be pardoned for differing with my distinguished friend from Wood. But really it strikes me as so plain a fact—

MR. VAN WINKLE. The gentleman from Doddridge has moved to strike out the whole section, and that is the pending question.

MR. HALL of Marion. My position was founded upon a misconception as to that particular motion.

MR. SINSEL. I was about to show that instead of striking out the whole of this and leaving it to the legislature I prefer retaining the whole of it with the amendment offered by the gentleman from Monongalia; and in showing the advantage that retaining that amendment will have over any proposition that has been discussed here I will refer to the item of expenses.

Now, if I have a note against you for one hundred dollars—a plain note of hand—I will go to a lawyer. The first thing he does is to give the clerk a memorandum of the suit he is about to bring. The clerk issues a summons and I am required to appear at rules. The gentleman then goes on and my counsel files my declaration. You know that the claim is just; you know it is unnecessary to go to any other expense, to make any defense and you intend to just let judgment go by default. Now, the very least amount of cost that will be due the clerk in such a case as that is $2.91. Well, now, the expense does not end there. The commission, then, to the sheriff will be five dollars, the attorney $2.50. So that you have, in round numbers, the clerk $3.00. That would be $10.50 and to the sheriff 50 cents more. There is $11.00 minus nine cents; or $10.91, as the cost that I would recover off of you. Well, does it end there? No, sir. The attorney, in addition to these costs absolutely charges me five per cent for collecting that money. So there is an expense of $16.00 incurred to the parties plaintiff and defendant in order to collect $100.00 where there is no defense, where the judgment goes by default. Well, now, it will be less than that even before a magistrate. But allow the magistrate the same fees for like services as the clerk of the circuit court would get. Well, where would I pay then in this instance? I would have no declaration to file; there is no charge by the clerk; no continuance at rules and I would not have copies handed out by the clerk. There also would be a saving. That is as to the defendant; and add to that two dollars and a half and I will save at least a dollar from the clerk and two and a half from the attorney—three dollars and a half saved to you, and at the same time I save five dollars myself. I have no commission to pay the attorney. The commission to the constable might be the same as to the sheriff for serving summons might be the same; so that in the collecting of that money the litigants would save five and three, is about eight dollars and a half: one-half the expense saved at least.

Well, now, it was argued here today very strenuously that you would not be likely to get justice in cases of that kind; that it was necessary to have these pleadings; and here now in this case, as I have referred to, what pleadings are there? Yet the attorney files his declaration, and it is hardly ever looked at. The clerk enters up the order; the case comes into court and nine times in ten judgment is entered without any investigation, the court scarcely paying any attention to it. The clerk does nearly the whole of it himself. In cases where any controversy will arise, why the Constitution of the United States makes a provision that a party shall have the right to trial by jury where the sum is over twenty dollars. What does the law do? It simply says the magistrate shall certify the set-off, over twenty dollars, to the court before trial by jury. It then is optional with the defendant whether he will go into the circuit court or not.

MR. IRVINE. I do not think there is any such provision in that section.

MR. SINSEL. Well, but the Constitution being the supreme law of the land it is not necessary to reiterate it here. It takes that course, and the legislature will provide to carry out this as taken in connection with the Constitution of the United States in framing the statute. Well, then in addition to that the party plaintiff is not likely to bring his suit before the single magistrate if he sees it ultimately will go to the circuit court. It is against his interest. If he sees it is a complicated case, why he will at once bring his suit.

MR. WILLEY. This law absolutely confines it to the justices of the peace. You may appeal after judgment, but you are bound to bring it to the justice of the peace according to this section. "Shall embrace all questions of that kind."

MR. SINSEL. Well, it is very evident that there may be a provision here of that kind. But surely, as we have in a former part of this Constitution we have embodied in it provisions acknowledged to be the supreme law of the land, and as that instrument itself makes a provision of this kind, the two must be made to harmonize, and the legislature will surely do that.

They say that the cost will be greatly augmented on account of appeals. Now I appeal to every gentleman in this house who has seen these litigated cases—cases which have gone into the cir-

cuit court on appeals from a single magistrate—to know of them, in ninety-nine cases in a hundred, of the cases that go there on appeal where the costs are great if the amount in controversy is not frivolous—not twenty dollars—scarcely any cases where the appeal is over twenty dollars—that there is such an amount of cost accumulated on it as stated by me. They originate very frequently in these little frivolous suits. To strike out the whole of this clause, as proposed by the gentleman from Doddridge, why the legislature may possibly contract, limit, the powers of the justices of the peace so that the people may experience great inconvenience from it. If the people do not want justices of the peace to try their cases they will take them into the circuit court; and as he has been such a strong advocate of the people, I hope he may give them at least the opportunity in this case. If they do not want to bring them before the justices they will take them into the circuit court; and if the plaintiff is anxious to bring them there and the defendant prefers them in the circuit court, he can just say: Mr. Magistrate, certify this to the circuit court. I have certified many a one as justice, and I hope hereafter may have the privilege of doing the same thing.

MR. STUART of Doddridge. If I were discussing the question now whether we should legislate so and so, it might be the gentleman from Tyler and myself would agree on many points. But, sir, this gives justices of the peace jurisdiction, and we are seeking to increase that exclusive jurisdiction. He says I have always advocated the rights of the people. The people through the legislature might want to change this thing, and here it is irrevocably placed. I am sure the argument of the gentleman from Monongalia was satisfactory; but it is not necessary I should reiterate the arguments used by that gentleman. If the people want this jurisdiction extended and want them to have jurisdiction even in trespass, why the legislature will have the power to give it; but if we prohibit it or grant it here, it is then out of the reach of the people and out of the reach of the legislature. Why not leave it to the legislature, then? There is no provision here in the section that you are seeking to adopt giving to the defendant the right to move the case. But it gives it exclusively to justices of the peace; and there is no remedy except by appeal. Now, sirs, go before a justice of the peace with a litigated case—a case in which hundreds would arise. This amount I will venture to say that in a litigated case there will not be one in twenty that will not go up to the higher

courts and which will go there in such a form that the costs probably will exceed the amount of the debt in every case; and very likely the plaintiff would be the party at court who had carried up the case. And what is gained by it? Only heaping cost upon cost. I saw a litigated case where the cost amounted to forty dollars. I am willing that when men go into court and accumulate that amount of costs it should be among them; but it shows that it is not the proper tribunal at least for cases to the amount of fifty or a hundred dollars in litigated cases. If we propose to go into detail and legislate, fix up your section so that it will be fair, giving either party at least the right to move these litigated cases to court. Our Bill of Rights declares that trial by jury should be preserved. Are you going to repudiate that? Are you going to try cases of this kind before justices of the peace without the privilege of having a jury?

Another thing, sir: when you go into details in a Constitution like this which we are framing to govern the people in all time to come, look at the difficulty that may arise. Here: "In a controversy where the amount involved does not exceed fifty dollars subject to appeal." Now, sir, what construction would be placed on that? It is subject to appeal. Is it liable to any legislative restrictions? Does a party have a peremptory right to appeal, or would he have to give security? Now, there would be a legal question that we are not prepared to solve. It is much better to leave this to the legislative body, and if they legislate wrong on any question, why, it is easily remedied. If we adopt principles here in your Constitution, they are permanent and you cannot reach them through legislation. Now, sir, let us leave our legislature to fix these things. I am with the gentleman from Tyler that where plaintiffs desire to bring their action before justices of the peace I would give jurisdiction to one hundred dollars. That would be plain actions. In such cases it would be the interest of both that justices should have power to render a judgment settled. Our present legislature has increased their jurisdiction to one hundred dollars, but it is with provision that the parties have the right to remove the case into court if either desires it. There is concurrent jurisdiction of the justices in county court and circuit court.

MR. VAN WINKLE. I do not think gentlemen have fully considered the provisions of this section. I do not think the arguments that have been adduced here apply to it on the part of those

who wish to strike out. I do not think the redeeming feature of the section has been alluded to by any of those who have spoken. Now, sir, all that has been spoken against is embraced in about four lines of this section. The section is principally occupied in defining the territorial jurisdiction of the justices and constables. Two or three lines in the beginning show what kind of actions they may try. But one line again confines it to fifty dollars and all the rest is employed in defining their territorial jurisdiction to making it co-extensive with their townships. Now, sir, I do not know from anything gentlemen have said here whether this feature they wish to get rid of or not, but if that is the case I ask the friends of the township system to stand by the section. I do not know—gentlemen do not know—with what degree of favor this system is to be received in the next legislature—the first or any succeeding legislature. I do not know but there may be that kind of prejudice against it arising from the mere want of acquaintance with it. I do not know, sir, but there may be that kind of prejudice which arises from the fact that it has been heretofore untried among ourselves, and also that kind of which we have had some times evinced here, that it happens to be in force somewhere else.

Now, sir, if the members of this Convention are satisfied in their own minds that we have done a good thing in getting rid of this incubus of the county court and substituting the township system for it, then I hope that gentlemen will stand by it so as to give it a fair chance.

The great idea of the township system, the great benefit that is to be derived from it, as we conceive, is the fact that we are reducing the territory within which the citizens will be called upon to act, that we are bringing all their public business nearer to them; that we are enabling them to decide in many cases for themselves. And in reference to these justices of the peace, according to the spirit of these sections we are giving to each township, to each limited neighborhood, its own justice of the peace, to do its own business instead of giving a certain number of justices of the peace to the whole county, any of whom may be called on under any circumstances.

This section connects itself, then, very distinctly with the township system; and the powers and duties of the magistrates are scarcely involved in the section. You may, if you please, leave it to the legislature to say what shall be the extent of their jurisdiction of dollars, leave it to say what actions they shall try and de-

termine; but unless I knew what is to be the constitution of the succeeding legislature, for one I am not willing to place it in their power to strike out the beneficial portions of this township system. Now, sir, can I see, even if we do fix the precise actions which they shall be allowed to try, or if we do limit their jurisdiction to a certain number of items that it is objectionable in the slightest degree to what has been represented so often as legislating in the Constitution. Sir, I do not hear anything about fixing the jurisdiction of the circuit courts.

MR. WILLEY. The jurisdiction of the circuit courts is such as shall be prescribed by law. Such is the plan the committee proposes.

MR. VAN WINKLE. That may or may not be; but I apprehend that if anybody had said they should not try suits involving less than a certain amount the objection would not have been raised. What we propose here, and what is the distinctive and most important part of it, is that which confines the jurisdiction of these magistrates to their townships, and the necessary provisions to guard against the absence or illness of the magistrate, and also to confine the operations of the constable to the same limits. Now, if the Convention think this as important as I do—if they agree with me in this, then this Constitution is precisely the place to put it. If they think it is a matter of no importance, and if they think it is a matter of no importance how high or low the jurisdiction of justices of the peace shall be, what description of actions they shall be allowed to try, let it go. But if they do think it is a matter of importance—anything dependent on it—then let us fix it in the Constitution and do not let us be scared or frightened off because the cry is raised that we are legislating. Sir, we had that cry raised a hundred times in the convention of 1850. I apprehend there was a great deal more legislation put into that constitution by the very ones who raised it than we are likely to put into this. We will have many things new to the legislature to fix about these justices; but it has been a question in this community —a question that has been a good deal debated in the country—as to what should be the extent of magistrates' jurisdiction. We have seen here that there are different notions on the subject; we have been told in this Convention that the legislature now in session has raised the jurisdiction to one hundred dollars. And now, sir, if we are establishing a system, it is the more important that we place some limits upon it. I do not see, sir, that the objection is

a valid one; for if you allow it to be a test that legislative matters are to be introduced here—then all matters to be decided on here are legislative matters. It is proper for a constitution to fix limits to every department of the government. We say here what the legislature may do and may not do; we will say what the executive may do or not do; we will fix the amount which may be appealed from; we will fix many other things that are precisely analogous to the few provisions in this objected to. My opinion is in reference to these matters, it had all better be put in the Constitution. We had better give the general outline of the duties and powers of these magistrates. I am certain, sir, that if we wish to see our township system carried out in anything like its integrity, we had better provide that jurisdiction of these justices shall not extend beyond their townships. I ask gentlemen to consider that point. I ask those who are friendly to this system and who, with me, expect to derive great—I may say immense—benefit from it if we will not risk something in reference to that system if we do not make it apply to justices as well as to other officers? That is a consideration which legitimately addresses itself to the members of this Convention; a consideration which, if they agree with me, that it is important we should limit their territorial jurisdiction, they cannot for a moment hesitate to say should be there properly placed in the Constitution. If we are giving a guide and direction to the future—establishing a rule for fifty years, as gentlemen say; if we are to choose between that which we know to be in accordance with the rest of the system we have instituted and fluctuating every year—restricting jurisdiction and enlarging it, had not we better fix it at once and let it be tried? We have adopted, at the recommendation of the gentleman from Ohio and others a system by which any little amendment may be secured in a summary way without the necessity of calling a convention of the whole State. We have adopted a plan by which amendments can be proposed by the legislature; and we certainly risk no very great thing if we do understand what we are about and do want this system carried out—then, I say we can risk nothing here by fixing that limit to the jurisdiction of magistrates. If, on the contrary, we want to be all at sea, with a system that has one part fixed and another part unfixed, why, then strike out this section and let it go. But my own opinion is that if we do we shall regret it. But, on the other hand, I cannot see what evil is to arise from fixing a limit to their territorial jurisdiction. No gentleman has argued that part of the question, when in fact it is the great ques-

tion involved in the section. We are brought to a discussion of the section before we have an opportunity to amend it, to make it more satisfactory to those who are not opposed to it, and the question arises on the section as it stands. There is no doubt some judicious amendments can be introduced and make the whole more acceptable to the great body of the Convention. But now, whether we will abandon the principles of township organization so far as they are involved in this section, or whether we will stand by and maintain them, then I go for the latter, and I trust the Convention will sustain me.

Mr. Brown of Preston offered the following:

"Resolved, That when the Convention adjourn, it adjourn to meet each day hereafter at nine o'clock A. M. until otherwise ordered."

The resolution was rejected.

Mr. Hagar rose.

MR. BROWN of Kanawha. I wish only to call attention to the subject. I will move, if it is in order, to substitute in place of the 7th section the 18th section of the judiciary report on the same subject.

MR. VAN WINKLE. That is made without any reference whatever to townships.

MR. BROWN of Kanawha. Ah! It is not in order.

MR. HAGAR. Mr. President, I move this Convention now adjourn.

The motion was agreed to and the Convention adjourned.

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XXXIV. TUESDAY, JANUARY 21, 1862.

The Convention met at the appointed hour and was opened with prayer by Rev. David E. Hervey, of Wellsburg.

Journal of previous day read and adopted.

Mr. Parker called attention to an error in the record made a week ago yesterday in regard to a question of order raised by him. At the President's request he had reduced his point to writing and now handed it to the Secretary with request that the correction be made.

Mr. Sinsel, from the Committee on Credentials submitted the following report.

"The Committee on Credentials having had under consideration the petition of citizens of Mercer county, asking that Richard M. Cook be admitted to a seat in this Convention; also the petition of citizens of McDowell county, asking that J. P. Hoback be admitted to a seat in this Convention, are of opinion that the said Richard M. Cook and J. P. Hoback should be admitted to seats in this Convention.

Harmon Sinsel, Chairman."

The report was adopted.

The unfinished business, being the substitute offered by Mr. Stuart of Doddridge in lieu of the motion of Mr. Dering to increase the amount of jurisdiction of justices of the peace from $50 to $100, section 7 of the report of the Committee on County Organization, was taken up.

MR. WILLEY. Mr. President, this is a question in which I feel some interest, not because I am a lawyer. If I were to consult my interests as such alone I would go for the amendment and against the substitute. But because I think I know from personal experience in matters of litigation that if that portion of the section fixing the jurisdiction of justices of the peace shall remain as it is it will lead to, I may say, infinite litigation. I will venture to say it will multiply the practice of members of the bar ten-fold beyond what it is now; that it will lead to constant difficulties—perpetual conflicts between the law and the Constitution unless matters are better defined than they are now.

But that is not what I rise specially to notice on the present occasion. I wish to correct a very fundamental error into which my friend from Taylor fell on yesterday in regard to expenses. This seemed to be the great bugaboo. Well, now, sir, I have to say in the first place in regard to that, it is a matter perfectly within the control of the legislature. If the expenses in prosecuting to judgment and execution, an action of debt where there is no defense be too great, let the legislature provide a remedy.

But does my friend know a remedy has already been provided? He ought to know before he denounces the expenses of prosecuting an action of debt where there is no defense to judgment and to execution as onerous on both parties that he has a right now himself, and I have a right, under the provisions in our code to file a notice in the clerk's office, written by himself, at any time and in a short time procure judgment without any declaration, without any writ, without any rules at all—simply to file my notice; prepare my notice and have it served on the defendant. Let it be filed in the office; and on the coming in of that notice judgment is executed and execution issued against the party. No attorney employed, no fee, no rules, no filing of papers, no sheriff's fee beyond what there would be in the case of a constable for something of that kind, simply the serving of notice. But, sir, in a case of that kind all this cost to which he alludes should be avoided, and a process more summary, more definite, more conclusive is entered on the record at the county seat where the whole proceeding is ever preserved in the records of the county. Fifty cents for serving the notice—the same as a justice of the peace would have for entering up judgment and issuing an execution. And that is all the cost about it.

Now let us look at this provision in the Constitution. It applies to actions of debt where there is no defense, to all cases of detinue and of trover up to $100, where the very fact that you are bringing the action implies that there is a defense, and you must go to the justice in the country to try these matters of high import involving intricate legal operations, submitting to a single man the question of unliquidated damages up to $100. Five or six of your cattle are taken, your horse is taken, or sheep of the value of $100 taken, and to submit the estimate of unliquidated damages as well as the intricate operation of law to a single justice in the country. And you are bound to do that. He decides against you and against the law, and what have you got to do? Then you must take an appeal and bring it to the court at last. Now, sir, you go into the country, and as my friend from Lewis argued yesterday, to avoid surprise they carry the whole neighborhood on their side to cover all imaginable defense that may be made by the other party you carry up a multitude of witnesses. They must be examined, their costs must be certified to the court. If their appeal is taken then you go into the court and make up your issue; because it is true you may try it with a third of your witnesses; but then you have double costs and double and treble, and instead of getting

speed and prompt administration of justice you prolong it, and you aggravate the cause of complaint on the party that is aggrieved by compelling him to submit to all this inconvenience, heaping on the party that is beaten at last an immense amount of cost that might and ought to be avoided. Now, sir, the only ground of complaint that can possibly exist against bringing these matters into court is that of expense, and that objection can only apply in cases where there is no defense. But we have already provided in our code a summary remedy in the hands of the party himself without the necessity of applying to a sheriff and without the necessity of incurring the cost. That is to say, he would get his judgment where there is no defense and clear his money in a manner as summary and as speedy, and certainly more secure and safe, than he could before a constable under a justice of the peace.

Now I submit to this Convention most respectfully whether it is not prudent, whether it is safe to compel men to litigate important legal rights to the extent of a hundred dollars before a single justice. Why, sir, what is the use of your courts at all? What is the use of providing that men learned in the law shall be called on the bench if we are to be driven to men in the country who know nothing of it to decide on these matters? Why not dispense with your courts altogether and let justices of the peace have jurisdiction? I ask if it is not a dangerous principle? I ask if we are not imperiling the rights and interests of the citizen; if we are not imposing the unbending obligations of constitutional law, fixing a grievance, on the citizen that he cannot escape; that he must go through the process of a suit before a justice of the peace in the country before he can reach his rights according to law in the courts provided by law? And when we show that under existing provisions of law we have a remedy as summary and cheap where there is no defense as it is possible to have before a justice in the country, why will we incur this inconvenience and dangers to the rights, and I may say to the liberties, of the citizen, by having matters adjudicated before justices in the country who cannot be expected to be learned in the law and who at best will keep but meager records of the proceedings?

Allow me to repeat, sir, we must allow the people to have some capacity to manage matters themselves. Our old government is based on the fundamental idea of the capacity of the people to govern themselves. As I said yesterday I say today in all soberness and sincerity that while I have a profound respect for the intelligence of this Convention I have an equal respect for the intelli-

gence of my fellow-citizens at home. We do not combine all the wisdom in this new commonwealth. We do not possess all the intellect past, present and to come; and we have no right to impose these unbending legislative rules—not fundamental principles of constitutional law—but this unbending legislation—on our posterity for all time to come. The circumstances of the country may alter; the mind of the people may alter; and it is a possibility that we may commit an error in what we do; and if we fix these unbending rules in the Constitution we may impose grievous restrictions on the people that cannot be amended. Why not then allow the legislature to have some discretion in these matters? Why not allow ourselves to have the benefit of experience. Are you going to incorporate all the duties of justices of the peace in this Constitution? Look at your code, sir. It will require twenty or thirty pages from the code to contain all the provisions that are now there prescribing the duties of justices of the peace. You wish to put it in one little short paragraph here? Exigencies may arise which are necessary hereafter showing the necessity of additional legislation. Up comes the implication: the duties of justices of the peace are defined in the constitutional law, and we have no right to go outside of the duties there laid down. The legislature has no authority to impose on them any duties not designated in the Constitution. Or the operation of the provisions in reference to them may turn out not to work well in our new system. But then we are bound by the Constitution and are bound to submit to the grievance. I beg gentlemen to pause and consider. I will co-operate with them as far as possible—as far as it may be prudent to go in all measures for simplifying our judicial proceedings, making the administration of justice and the collection of debts summary and prompt as gentlemen may desire. I will do that, but I submit at the same time whether we may not go too far. At the same time we are not all creditors. I submit, sir, that debtors in this community have some rights as well as creditors, and that we may go too far in clothing our judicial authorities with this summary process of pouncing on the creditor without leave or license in all circumstances and hastily prosecuting debts to judgment and execution. Let us be governed to some extent by the wisdom of the past, and in our eagerness to redress what may be acknowledged to be existing grievances, let us not run into the other extreme. I hope the Convention will pause in this matter. I really believe we will do great detriment to the interests of the people if we incorporate this provision.

Now, as it regards the question of a thrust at the township system, I have no such desire at all, sir. So far as I am concerned, I would be perfectly satisfied if we confined this substitute to that portion of this section which has reference to fixing the jurisdiction of justices of the peace as to how they shall operate within their townships and all that sort of thing. That is a matter I have not considered, and am willing to submit to the better judgment of those who have. It would seem to me, however, the legislature are perfectly competent to adjust all these matters of legislation. But if those who have considered this matter think it necessary to the perfection of this new system that some rules and regulations be laid down in the Constitution to preserve it, why let it be done. All I am objecting to at present is that I believe that these constitutional provisions in this section in regard to the jurisdiction of justices of the peace will work disastrously. Disastrously, sir. And it will saddle the people with cost and produce interminable delays, stir up litigation just as certainly as it has done elsewhere, and instead of promoting justice it will promote injustice. Let us leave this matter to the discretion of the legislature. Why, sir, is there any danger that the people cannot control the members of the legislature so as to give jurisdiction to a hundred dollars—to certain alterations if it be deemed necessary? We have already done it. And, sir, there is not a state in this Union that has such a provision in the Constitution as this. Not a single state, sir. We give jurisdiction here for actions of detinue and for trover and conversion; in actions founded on unliquidated damages. We give such jurisdiction that it may go arbitrarily in the first place to the justice of the peace. There is no constitution in the Union, in my humble opinion that contains such an arbitrary provision as that. You may give justices of the peace jurisdiction, but there are some modifications and restrictions. In actions of detinue I know it is so where there is no defense. What do we gain by incorporating that principle in our Constitution, now practical law? We have it already in our code. Let us try it a while there, and if it works well it will be kept there.

Gentlemen ask here, will we not give some rights to the people? I say, yes. I stand here for the people having some power in their hands to regulate their own concerns. We provide in one part of this Constitution for a legislature, giving them authority to legislate, and in the next chapter we take out of the hands of that legislature the essential principles of legislative authority, legislating ourselves for the people for all time to come.

Sir, I am manifesting some degree of warmth and earnestness in this because I derive my reflections from absolute experience. I would pause before I would rush into this untried experiment in constitutional law. Why, sir, what would a merchant think if I were to go into his store and begin to denounce him and dictate to him and tell him he ought not to venture here and there in matters I knew nothing about. Sir, I am speaking from the honest results, the dictates of law and experience in connection with this matter, and I give it as my most deliberate opinion that if we adopt this principle in the Constitution, instead of making justice easy and summary you will make it prolix, you will still encumber it with costs and embarrassments that will be grievous and oppresive to the people in the end and instead of discouraging litigation will multiply it ten-fold, when we have the remedy in our hands in the legislature to provide additional remedies for all the evils of which I complain, why will we incurr all these dangers? I hope the Convention will not do it.

MR. PARKER. The gentlemen from McDowell and Mercer are now in.

MR. STEVENSON of Wood. Mr. President, I wish to make a few remarks on the amendment of the gentleman from Doddridge, and also in reference to the amendment made by the gentleman from Monongalia, as I believe the entire subject has so far been discussed in that way. I am opposed to striking out the provision as it is in the report of the committee. The very reasons which I would urge against striking it out are the very reasons which have been urged in favor of striking it out as a general thing. There is something like a paradox there, but the difference is between our legal friends and not between the outsiders. Some of these gentlemen tell us that to increase the jurisdiction of the justices of the peace beyond fifty dollars and to a hundred will increase litigation. Other gentlemen of the profession tell us that unless we increase it it will cause litigation. Some of them tell us that it will cost more for court cases, tried in the circuit courts; others tell us it will cost less to have them tried there. Now, sir, when lawyers differ who shall agree? Let me say—and I hope I can say it, as I think I can, with candor—that the people, at least outside of the profession, favor the idea or the principle set forth in the provision of the committee. Now, however it is, whether people are right or not, one thing is unquestionably true: that they believe the increase of the jurisdiction of justices to amounts of not less

than one hundred dollars will decrease the price or cost of obtaining justice and decrease the number of suits that will be carried into the courts. They unquestionably have that idea; and I am willing to make the prediction that if you were to submit this question of extending the jurisdiction of the justice to one hundred dollars to the people, three out of every four would vote in favor or it. So that—

MR. WILLEY. My argument was based on the fact that the people have a perfect right at any time to do that, and they have done it.

MR. STEVENSON of Wood. I am not aware, sir, that the law has been changed so as to give justices the right to try cases exceeding fifty dollars. It is a very new matter—so very new that some of the members of this Convention told us they had never heard of it. But suppose the legislature are not of the temper and do not conceive it to be their interest to fix this jurisdiction, are we to have all these evils because the changes in the legislature are such that we can have no stability in this office of justice of the peace? I am opposed to striking out.

And while I am on this matter of increasing the jurisdiction of the justices of the peace I will say what I have to say on it and then speak in reference to the other. I have said, sir, that I base the argument not so much on the opinions of the gentlemen in the legal profession, because they differ, as I told you, but equally, it appears to me, on the facts growing out of this matter. I base, therefore, my argument upon the opinion of the people themselves; and I say, sir, that I have so much faith in public opinion that I believe that where the public have fairly, calmly investigated any matter, even a question of law, or any other matter, that they will come to a more correct conclusion than any small number of men, the wisest in the world, that we can get together. Their conclusion will be the more just and correct one. I do not suppose, of course, that all the wisdom in the world, is in this Convention. I am very well satisfied that there is a large amount here, and I am equally well satisfied that all the wisdom of the world will never be concentrated in one legislative body in this new State or in any other body; and therefore I would impress all the wisdom we have in this Convention on provisions of this kind in the Constitution, so that any lack of wisdom or superabundance of wisdom which may be found in any legislature will not render unstable and uncertain what we have fixed in this Constitution. It is said, sir, that

our very government here is based on the idea of the capacity of the people to rule. Why, sir, everybody knows that is true; but does any gentleman pretend to say here that there are not restrictions, that there are not limits to the jurisdiction to the exercise of the functions of every officer under and in and about this government? That is true, sir, notwithstanding the fact that the government itself is based on the capacity of the people to rule themselves.

Another matter, sir, before I forget it. It is said that men may obtain justice more cheaply by going directly to the courts instead of having their cases brought before a justice. There is another thing about which the lawyers differ; but let me say, sir, that if there is such a condition of things existing in regard to the law—if this simple and cheap mode of obtaining justice in the courts, the people in my region of country, at least, have never discovered it. It is a dilemma there, I can assure you. And the opinion prevails almost universally that if a man enters the courts with even a just claim and has to go through the process of trials which may be fixed by the attorneys on either side and by the court, even if he wins his case he comes out a poorer man than when the suit was commenced. Now, sir, the people believe that and I believe people generally who have business in the courts experience it. I give that as an offset to that argument. It seems while the theory may be true, the practice is not. Another consideration, and an important one. In order that the position of justice of the peace may be made such as we desire it is important that it be filled by good men, men of proper capacity to perform the duties that belong to that office. The person who fills that must be a man not only of good judgment but of fair abilities; a man who must, or ought to, understand the law as far as it applies to his official duty. You make the sum to which the jurisdiction of that justice of the peace extends to fifty dollars, or twenty dollars; make the sum such as that it will appear insignificant, what will be the result? Why, men unfit for the office will seek it and men unfit for it will get it, because no man who has the capacity to discharge the duties of that under such circumstances, as a general thing, will accept it. Well, then what have you done? Why, sir, here is a large class of men in the community—probably the largest—come under the amount that gives them the right to appeal, poor men who have just as much right to justice and equity as any other class of people. They are at the mercy of a man totally, or nearly, incapacitated for the discharge of the duties of the office

because it is filled by an incompetent man. They have no remedy, that class of persons, no right of appeal. The decision of the justice in their case is final in civil cases and there the matter must stop and injustice be done to a very large class of the community. Now, sir, I take it that here is one thing that will be acknowledged: that all the suits between ten and a hundred dollars that are settled finally before justices of the peace a large number is prevented by that process from going into the courts at all. There is so much less business to be done in the courts because so much has been finally settled right at home amongst the parties themselves and before the justice. Now, sir, that will be cheaper, certainly, for the parties; it will be cheaper for the people; it will keep a large amount of business from getting into the courts; and I am willing to admit it will prevent a large amount of business from going to the lawyers. If we strike out this provision and leave this matter exclusively with the legislature, why you have unsettled the position of a justice of the peace, which is an important part of the county system. You have broken the back of one of the most important features in the system of county organization. Why should they lay down some limits here within which the jurisdiction of a justice shall operate? Why have you done it in every other report of this Constitution so far that you have passed? Take this report on the judiciary; why, sir, here are some ten or eleven sections that are taken up almost exclusively in defining the qualifications, the time for which these judges hold their offices, their residence and their jurisdiction in certain cases which shall have jurisdiction, and in certain cases in which they shall not have jurisdiction.

MR. WILLEY. So far as circuit courts are concerned, what report provides shall be the jurisdiction of the circuit courts?

MR. STEVENSON of Wood. I am speaking now of the courts generally. The first one that attracted my attention is the Supreme Court of Appeals. It specifies that the judges shall be thirty-five years old; that they shall hold their office twelve years. Why, you go so far even as to prescribe the amount of money these men shall receive for all time to come or until this Constitution is altered.

MR. WILLEY. I was speaking of the jurisdiction.

MR. STEVENSON of Wood. Why, sir, I would have to read eleven sections if I were to tell you all that is said about the jurisdiction. Any member has the report and can read it, and he will discover the fact to be as I state it. I refer only to such as my eye

has fallen on here in reading the matter over hastily. I find that these courts shall have no jurisdiction in civil cases where the amount is less than two hundred dollars except in certain cases which are specified here, I am only showing you that you have adopted the principle of stating jurisdiction and prescribing qualifications and fixing salaries in part of the courts and if a principle is good in that case it is far better in the case of the justices of the peace. That is my argument. In reference to the justices of the peace, let me tell you, sir, that the duties of that officer I will venture to say are better known, are better settled and fixed in society than probably the duties of any other public officer. Why, sir, from time immemorial almost there are certain cases upon which it is supposed the justice of the peace is eminently qualified to act and ought to act. I say usage has settled that fact better than it has to any of the higher courts—the duties and prescribed limits within which justices shall act and these have been as a general thing specified when the duties of that office have been set forth in a constitution or in any law for that purpose.

I will state to you how I think the matter will operate if you strike out this provision. If you wish that justices of the peace shall have actions except such as the legislature in its wisdom may hereafter prescribe, why, sir, I take it you have just about destroyed the office of justice of the peace. There is no stability, there is no certainty, no knowledge of what the duties of that officer shall be or whether he shall have any duties to perform. Probably he may be allowed to sit on dead bodies, as Shakespeare says—to perform the duties of coroner in his township or in some parts of the county where they may be required. Do you expect that any man qualified to act under such circumstances in the different townships? It will depend altogether on the mere change of the temper of every succeeding legislature. There is no great principle of duty upon which that office can be anchored and said to be stable and steady. Everything is left at sea.

These reasons, sir, in opposition to striking out the section and inserting the one offered by the gentleman from Doddridge, and others—are some of the reasons which I urge in favor of increasing the jurisdiction of justices of the peace from fifty dollars to one hundred. I say the mode will be cheaper; parties interested can obtain justice more cheaply. I say it will induce parties in many cases—I will venture to say a majority—to settle their cases right at home amongst their parties before it has extended to the county and created an excitement amongst a larger circle of people.

More than that—although I have not the statistics—a majority of the causes that go into the courts or before justices are between ten and a hundred dollars—probably a larger amount under than over one hundred dollars. At all events a very large proportion comes to one hundred dollars and between fifty and one hundred. If you can settle even one-half finally before the justice of the peace, why, sir, you have accomplished a very important matter, it seems to me, in the way of cheapening justice and preventing litigation from being extended to the county seats in the different counties.

THE PRESIDENT. The Chair would call the attention of the Convention to the 28th rule:

"28. While a member is speaking, none shall entertain private discourse, or shall otherwise disturb him, or pass between him and the Chair."

There has lately been a great deal of conversation and want of attention while members have been addressing the Convention. I hope the Convention will give that rule some attention.

MR. SINSEL. I wish to refer to a few remarks of the gentleman from Monongalia where he said I had gone off into that great error. Now, in reference to obtaining justice by judgments by a notice filed in the Clerk's office, who ever heard tell of the like without the intervention of counsel? As a general thing, Mr. President, that remedy is only resorted to when there is a kind of a collusion between debtor and creditor in order to defraud another creditor who has instituted his suit regularly. In all other cases, sir, they are like angels' visits, few and far between; scarcely ever hear tell of them; whereas, what member of this Convention, outside the legal profession would know how to institute such a proceeding to recover his debt? Not one, I presume; not one. And if he undertook it and the defendant was opposed to it, he would meet the same obstacles and the same objection from the legal profession in the shape of delays and non suits that he would in any other form of litigation. And besides that, would not the parties have the very same remedy then that they would have if the jurisdiction of the magistrate was extended to one hundred dollars? They might go into court then if they choose with their notices instead of going before the magistrate. I see nothing to prevent that.

And I will just give notice here that if this section should be stricken out, I will offer an amendment or a substitute in this form:

"The justice of the peace within his township shall have concurrent jurisdiction with the circuit court of all sums where the matter in controversy, with interest and cost, does not exceed one hundred dollars of value. If the matter in controversy exceeds twenty dollars in value the defendant may have the case certified to the circuit court for trial."

MR. BROWN of Kanawha. I desire to say but a word on this subject. In framing a constitution, I imagine the great object is to secure the public good and not provide for the benefit of any individual or class of individuals. The question, what is for the public good, is one important consideration. I confess I have listened to this argument impartially, but I cannot, for the life of me, escape the conclusion that gentlemen seem to be actuated by a sort of apprehension that lawyers oppose the extended jurisdiction of justices of the peace from motives of interest or class. A gentleman who advocated the extension of jurisdiction seemed to apprehend that they have discovered a great "mare's nest" in the legislation and constitutional construction; that by the extension of this jurisdiction they are going to diminish suits and costs and please the country. And the gentleman from Wood bases his argument not upon the divisions that he says exist between lawyers on the subject—not upon the facts of the case, but upon what he understands to be the will of the people. Well, the gentleman seems to have great faith and reliance on the people; and I confess I am one of those who will never yield in loyalty to the people to him or any other. I have as high an admiration for the will of the people and wants of the people as any gentleman; but, at the same time, sir, I stand here to question the fact as alleged by the gentleman that he represents the will of the people in this matter. He speaks of the will of the people as if by some mode he was apprised of it. I wish to be understood, sir, that we represent a few people on the other side of the house and that we controvert the fact that he represents the people or more than a very small minority of them. How does the gentleman arrive at the fact that he represents the will of the people, and that it is the wish of the people that this clause should be inserted in the Constitution? Has there been any expression of popular opinion on the subject? Has it been a question made before the people and presented in such form that the people could form and express any opinion on it? Will you

take the votes for delegates to this Convention to frame a constitution as any indication of what the wishes of the people are on this particular topic? Why, sir, in every view of this case the argument is groundless. I profess to have had some little experience and intercourse in life with the people, and that experience has taught me something of their wishes and feelings on this subject. I have been for many years, sir, bringing suits at the request of the people to enforce their just demands against their debtors. A large number of these claims are under a hundred dollars, beneath the jurisdiction of a justice of the peace and beneath the fifty dollars as heretofore. I have said many and many a time and again to my clients, "Why don't you go before a justice with this claim? Sir, I am not going to trust this claim before a magistrate. I want to test it in the proper tribunals of the country. I want no tribunal which I do not regard as sound to decide the question and transfer the case to the court, to be referred at a double expense." Now, sir, here is a little experience, actual practical experience of a man that brought him in contact with the people about the identical question in controversy here. How much of the kind has the gentleman from Wood given us on his side? I have had some little experience in our neighboring states. Living, sir, in that corner of Virginia where I have had frequent access to the people of counties in Kentucky and Ohio. I have had some experience in intercourse with people on the Kentucky side and it has been my fortune to have opportunities to practice to some extent in the courts of Ohio from my own residence in early life, and I have seen in Ohio and in the courts of common pleas, where their jurisdiction of a justice of the peace was a hundred dollars, when nearly one-half the suits on the dockets were appeals from the justices, with the transcripts of the records of the magistrates made out there to bring the cases into court; and I have seen the pettifogger come up as a witness to prove the cause; have seen the court, and the jury and all, and the cause to some extent placed in the attitude of ridicule by the criticisms of counsel on the conduct of the witness of pettifogging the case for the justice of the peace.

Instead, then of diminishing litigation you have the practical facts of crowding the dockets of the courts of common pleas with appeals and transfers of these cases from the justices' jurisdiction to that of the courts, with added expense of going first through the justices jurisdiction. What then is gained by it? Here is its prac-

tical operation as I have seen it in Ohio. Here is the practical operation that many of us have witnessed in Virginia.

It is useless for gentlemen to try to cry down the lawyers. It is as utterly impossible as it is to break down the government; because lawyers are an inevitable necessity to humanity. You cannot have a government without them, and there has never been one since the world began when there were not lawyers to execute the laws. I believe this from conviction derived from experience. I have seen and talked of it, this very law that stands on the statute book, that has been there ten or fifteen years or more, alluded to by the gentleman from Monongalia. It was an attempt of the legislature to enable the people to bring their own suits without the aid of a lawyer, and it is made so plain and simple that he who runs may read. The worst simpleton in the land can understand it; and if the gentlemen of this Convention will write from now till doomsday they cannot make it more so. It is simply that any man who has a debt due to him may just write a notice to the debtor giving him notice when he must pay and file it in the clerk's office, and the trial comes on and that is sufficient.

MR. VAN WINKLE. Has the defendant nothing to say?

MR. BROWN of Kanawha. He has if he wants to.

MR. VAN WINKLE. And the thing has been found inoperative on that account; that after you begin, you are thrown back just where you began.

MR. BROWN of Kanawha. The plaintiff has nothing in the world to do but just write a notice and send it by anybody in the commonwealth—or out of it. Anybody but a negro that can make an affidavit can give him a copy. That is all that is required to obtain a judgment on a note. I know, sir, in the county of Logan when the law first came out. It was an argument against lawyers before the legislature. It was the result of an agitation against the domination of lawyers in the legislature, against their shaping legislation in their own interest, as it was claimed, so that their services were indispensable to the people. It was claimed that by simplifying the processes of suits, people could bring their own suits and save the intervention of lawyers. But it was found, as all experience shows, that in all civilized countries, where the machinery of the laws is employed to settle controversies over rights of property or person, a knowledge of the law is indispensable;

and since it is impossible the body of the people can have acquired the necessary familiarity with it to be their own lawyers, the profession is a necessity that cannot be dispensed with. That is why this old law has been found inoperative. It is impossible to carry on a lawsuit without the aid of counsel who are learned in the law. It is therefore unwise to attempt to take your judicial proceedings out of the courts of record where things are done in order and entrust them to tribunals unacquainted with the law which they are required to administer.

One gentleman proposes to make this jurisdiction concurrent with the jurisdiction of the court. I confess that strikes my mind with much greater force than the proposition in the report of the committee. If you do extend this jurisdiction to the justices of the peace and also give the same to the courts, then as the law now stands any attorney in making up his case could choose one or the other, and if he chooses to make his bed with the justice he must lie down in it. The other party has the right to have the case transferred to the tribunal he desires to decide the case. That relieves the case of very many of the evils attendant on the plan proposed in this report and is infinitely superior to my mind to anything that has been adduced on the other side. I then must, on principle, under any circumstances, oppose this proposition as it stands in the report of the committee.

MR. VAN WINKLE. As I have already addressed the Convention once on this subject, if no other gentleman desires to do so, I feel it incumbent on me as the chairman of the committee, charged, to a certain extent, of course with the defense of this report, to make a few remarks in conclusion, at least so far as I am concerned. I do not know from the remarks of the gentleman who spoke last and I would hardly know from the remarks of the gentleman from Monongalia whether they favored or not an amendment offered by the gentleman from Doddridge. The remarks of both have, as it appears to me been mostly confined to the simple question, not whether this jurisdiction should be raised from fifty to one hundred dollars or not. The motion offered by the gentleman from Doddridge, while it may be technically correct was offered at an unusual stage of the case, offering to supercede the whole report before there had been an opportunity to amend it; and the arguments now come forth from the gentlemen who have addressed the Convention as if the sum of one hundred dollars had been actually inserted here. So the gentlemen who might favor

the report in other respects but are opposed to the one hundred dollars might be induced to vote for the motion of the gentleman from Doddridge. I, therefore, sir, take the liberty of calling on members to note that there are two questions pending before us. In fact, according to the straight and technical rule of order, the motion to insert one hundred dollars is superceded, if I understand it; and a motion now to amend the proposition of the gentleman from Doddridge would, I apprehend, be in order if there was any desire to make such motion. But I wish to call the attention of the Convention to the questions in the order in which they will be presented. The first question will be as to striking out the whole of this section. If the one meets an affirmative and it is stricken out, of course the other motion falls; but if it should be in the negative and the section is retained, it will then be in the power of the Convention to make this any amount they may see fit and amend it in other respects if it is defective. I may have something to say in reference to the difference between fifty and a hundred dollars, which is more of a practical question and one in regard to which I would cheerfully defer to the opinions of others if I could understand them distinctly—if I could understand what the wisdom of the country, through its representatives here, would indicate in reference to that, it would afford me only pleasure to follow it. My own impressions, as I have before said, are in favor of one hundred dollars; but I am not so wedded to any opinion on the practical question that I cannot alter it if I see reason to do so.

But what I wish to do is to defend this report as it stands. I do not mean to say or to claim that every word of this report is correct; that amendments may not be introduced even by friends of the measure, or the opponents either which will improve it. It is very possible, sir, that such amendments may be introduced; and I would think it was a better way to try by amendment to make it more acceptable than to strike it out at one fell blow, especially for the reasons that have been stated.

It commences, sir, by saying that "the civil jurisdiction of justices of the peace shall embrace all actions of assumpsit, debt, detinue, trespass and trover." I should like to know if there is anything improper in that. When you are establishing these courts for the trial of summary causes—these courts that are to sit in the country and among the people; that are to do their business without all the formalities of the higher courts, it is certainly wisdom to take into consideration the fact, that has been so reiterated here, that there are certain classes of cases, certain kinds

of action which do need the manipulation that they receive from the higher courts—admitting at the same time, as candor requires every one to admit, that there are a class of actions which can be tried without these formalities. We have heard, sir, all this that has been said about pleading. What I said in reply to that last night ought perhaps to be sufficient, that the tendency of legislation in this State for many years past—I do not know how many but certainly thirty or forty, altogether in favor of simplifying that pleading—cutting off many of those intricacies and leaving it where it was equally as beneficial perhaps and without all the confusion and trouble and delay usually attending it. And now, sir, in these actions, to talk of pleading as applied to them and unless there are such circumstances in the case as would of themselves tell the plaintiff it would not be proper for him to bring his action before a justice—there should be no pleading except the general issue, not guilty, or payment, or something to simply answer to the claim; and, indeed, unless there are matters that come in, as it were, into these suits sidewise, there is very seldom any other plea even when you come into the court with your pleas. If to be tried simply whether the man owes the money or not, there is an issue at once; the clerk makes it up and not the lawyers. If it is to be tried in connection with assumpsit, the simple answer is that he did not assume, and then there is a direct issue. If it is in trover or detinue I believe the common plea is "not guilty." In actions of trespass, the answer is not guilty. That brings up the whole question involved in it. Now, if another party comes in to claim property involved, or something of that sort, further pleadings may be necessary—or not pleadings, but something of that sort. But if the committee have included actions that are really intricate, let us then amend it and strike out any such action, as we struck out "trespass." It will be with my hearty concurrence, because trespass might involve the title and boundary of lands. It is said detinue is objectionable because the right of property is to be tried; but that is a much smaller matter, for it is limited to personal property and can be more easily tried. But where it presents the simple question as to whose the property is I apprehend the justice of the peace in the country, with the aid I propose to give him, of a jury, to which gentlemen have not adverted in their remarks—although I gave notice of it last evening as being among the intentions of the committee—a jury of twelve men, if you please; I might propose six believing that to be sufficient. The question arises whether these are the only questions in the list;

whether it is not better to put down here all they are to try than to leave it at sea. If we have an idea of creating courts of a certain character to sit in the country, we must at least put so much in the Constitution as shall be a guide to the legislature in filling out the details and carrying them out. There will be a general clause here limiting jurisdiction, say to one hundred dollars. There must go into this Constitution somewhere a general clause that the legislature shall pass the laws necessary for carrying this into effect. And now where does it circumscribe the legislative, executive or judicial powers?

The next clause is that this jurisdiction shall exist "where the defendant resides, or, being a new resident of the State, is found, within his township, or where the cause of action arose therein." Under the present law every citizen of the state is entitled to be sued in his own county. The object here is—and I apprehend one the Convention generally will coincide with—to give to the citizen the right of being sued in these summary actions in his own township. It is the same provision that is found in the code and has been in the practice of Virginia for a great many years in reference to the county of a man's residence. It has this additional clause of exception so that a stranger who may come in and contract a debt may be sued in whatever township he happens to be found. It is the same thing in reference to state laws; a non-resident may be sued in any county where he is found, to be served with process, or wherever the cause of action arose therein. If the debt was contracted in the township, then he may be sued in it; just as the state law provides that if the debt was contracted in a county he may be sued in the county.

Now, I would ask whether if we are to preserve this township system, to give it a fair chance; if we intend that this system shall have a trial before it is condemned—if it is not proper that we should confine the jurisdiction of the magistrate at least to this extent, the township? Now, sir, even those provisions may be defective for aught I know. I do not think so, however; but if so they are open to amendment. However, as you notice, the substitute there sweeps all these provisions away and leaves everything to the legislature. If we could preserve this provision that suits be brought in the township I should be satisfied.

Now, we come to the sentence, and the only one, that is obnoxious at all to the objections made here: "when the value in controversy exclusive of interest does not exceed fifty dollars." That number is not to be considered as in any way trenching on the

peculiar views of the legislature. The gentleman from Monongalia admits he does not wish this question of territorial jurisdiction. This seems to be the only clause on which this talk about confiding things to the legislature is to arise. I think, from the discussion that has been had here this morning and last evening, judging from what has been said here on both sides of the case it is a matter of some importance where this jurisdiction is limited whether it shall be fifty or one hundred dollars. If gentlemen think one hundred is going too high, then fix it at fifty. Gentlemen have shown that they take a great interest in this, and that is an indication that their constituents also take a great interest in it. Then why should it not be fixed here in this Constitution? You thus not only control action here but that of the legislature hereafter. You make it permanent. This is then made "subject to an appeal to the circuit court of the county." By order of the committee this was reported "an appeal in all cases however small the amount." I should be disposed myself to limit the appeal, as it has been heretofore limited. We must fix a limit somewheres below which there shall be no appeal. That is a matter that should come up before this question is decided about striking out.

Then follows a clause which is rendered necessary by the previous provisions: "but a justice of any other township of the same county may issue a summons to the defendant to appear before the justice of the proper township, which may be served by a constable of either township." Restricting jurisdiction to townships, this clause is introduced to avoid the difficulty that it may not be convenient for the party to go to the township where the defendant resides, in order that the summons issue by or that he may go to his own justice but have it returnable in the township where the defendant resides. If that is an objectionable provision, strike it out; but it seems to me it is necessary and follows directly on the other. It is explanatory of what ought to be introduced further; that is to say, if the Convention is going to give this township system a fair trial. If we are opposed to this system, if we want to strike it out, render it nugatory, deprive it of the benefits which the friends of it apprehend from it; make it in fact as if it were not thrown out at all, why these provisions should be stricken out and those who are opposed to townships are acting perfectly consistent in endeavoring to strike them out.

It then goes on with further matters that follow of necessity: "executions issued by a justice may be directed to and executed by a constable of the township where the judgment is rendered or

in which the property to be levied on is found." Is not that necessary as a sequence? If we make this justice of the peace jurisdiction a township instead of a county jurisdiction, is it not necessary that these provisions should follow in order that the demand do not operate unequally or with hardship? Now I put that to the Convention. If you are to have a township system, are not these provisions necessary? And if they are necessary, what objection is there to putting them into the Constitution? If they are matters that you wish to leave entirely at sea for the legislature to put in one and leave out the next; if you are willing to risk the trial of the township system on this conflicting legislation, then strike them out; but if you wish it to go long enough to have a fair trial, to be decided fairly and on its own merits, then leave these provisions in and remember this, that if, as argued here, we should through inadvertence, oversight, want of knowledge of the subject, or from some other cause either put provisions in here which will operate badly or entirely omit necessary provisions, in such a case it is provided that the legislature shall propose amendments to the Constitution to remedy such faults. Now, if this particular provision should be found to work unjustly, or any provision not administer to the convenience of the inhabitants—as I think they will—or from any other cause it is desirable to change it, it stands precisely on a par with everything else we are to put into the Constitution. If found defective or superfluous, the legislature has it in its power to propose the necessary amendments. When a general overhauling of the Constitution may become necessary, fifteen, twenty or more years hence, as changes and experience may then render necessary, another convention will come together for the work; but single amendments are required, as will doubtless be found occasionally necessary for some years, the legislature can propose them separately and the vote to ratify or reject them understandingly.

Why then shall not these provisions in reference to these townships, that have been introduced with a view of giving them a fair chance, be tried? See how they suit and adapt themselves to the peculiar situation of our people—the same chance that is to be accorded to every other provision we shall insert in this Constitution? I do not know—can scarcely imagine—a provision unless it related to the very Constitution and legislature itself on which the argument would not be as strong to leave it wholly to the legislature as on this. Why not? If the legislature is so capable of judging in this matter—so much better capable of judging

in this matter than the Convention, why not leave all these matters to the legislature? Why not leave them to say how often your governor shall be elected, when and where? Why, gentlemen, there is a principle involved in all these things. These are not strictly legislative functions. They are fundamental. They give class and turn and direction to the operation of our institutions, and therefore they should be made at least so permanent that they cannot be changed on the mere whims and notions of the hour; but having wisely provided that if found burdensome they may be changed in a constitutional manner.

Another provision is that: "in case of a vacancy in the office of justice or constable in any township having but one, or of the disability to act of the incumbent, and any other justice or constable of the same county may discharge any of the duties of their respective offices within said township." That is another necessary provision following from the other. It is to exclude a conclusion. Taking the first part of the section alone it might seem that no exception was to be allowed; that if a justice is not there to discharge the duties they cannot be discharged at all. Having fixed that as his duty, we must introduce the exceptions. Gentlemen tell us that in these states where this township system prevails they find nothing to do. Why, gentlemen, the township is there with them as common law. They take it for granted a township there has a definite meaning, as much meaning as a county; and there are many things as to the county that we do not need to provide for in the Constitution, because it has become a sort of common law—what are its functions, why it is created, why it exists. Here we are introducing a new feature. It becomes doubly important that we should make it plain and palpable what we do mean in reference to it. But, sir, I have burrowed in these constitutions, and the gentlemen who usually sit before me have. I know the important provisions of most of them in reference to the more important matters and know the principle that lies at the bottom of the whole. I have not been so studious in reference to the subject of a jury to act before the justice of the peace. I have looked into a few codes and constitutions and find the rule laid down something in this way, that all those cases shall be tried by jury except as has been otherwise the custom. In reference to pettifoggers, I have seen gentlemen who afterwards filled the offices of governor and Senator of the United States pleading before a jury and magistrate in the country. I know that men who have filled high stations in other respects were constantly in the habit

as lawyers of going before these justices and their juries. And why not here?

Gentlemen tell us it is an untried scheme. But gentlemen know that it is not untried elsewhere; and if it succeeds there, why not here? Are our people less capable of administering their own affairs than the people of other states; less intelligent in the trial of these plain, matter of fact proceedings? I think not, sir. I say seriously and without any disposition to flatter that I believe that for sound intelligence our people are equal to any other in this country. I am not a native, and I can say this with propriety. They may not have all the smartness of a Lincoln; he may have certain qualifications which they have not; but for good hard common-sense, sir, I will put them against even him. And I say if the great advantages of education enjoyed in other states—not for a few years, but for a half century in some of them, had been enjoyed by our people, I believe our people would be superior to any of them. I say that deliberately. At any rate, if they were not as intelligent as I esteem them; if they were far below that rank of intelligence in which I would place them; if they were below perhaps the average of intelligence, yet, sir, this grand principle comes in here, that a man does not have to have great book-learning nor high intellectual qualities—nothing but a common-sense appreciation of his own interests, such as every man of sound mind has, to enable him to employ the simple machinery of the township system for the management of his own business. There is nothing after all but the interests of men represented in the government; and according as we take a higher or lower view of those interests—morally, intellectually, religiously, politically—and be governed by them, will the general level of our government be on a correspondingly higher or lower plane. A man's interest is not always wrong—not necessarily wrong. I say if we have a due degree of self-respect and a proper degree of self-interest, we would avoid the commission of a great many offences by the indulgence of that vice which was reproved here the other day and provision introduced in the Constitution to put it down. No, sir, no man takes a proper view of his own interests that would indulge in that way, because in seeking gratification and not looking ahead to what our real interest demands we fall into so many errors. Then I say, sir, that our people are just as competent to manage this system as any people can be. I say that setting aside a higher intelligence, greater soundness of opinion and stronger common-sense—which I claim they have in the same degree—they would

still be capable, because these are matters that come home to their own business and bosoms, and there is the true test; and that is where I get my devotion to this principle of placing everything as nearly in the hands of the people as you can. Because I believe if a man has to appoint an agent he will give to that agent no more power than is necessary, but will retain the control in his own hands. So when we appoint political agents I would act on precisely the same principle; retain all I can, give only what my business or interest demands. I, sir, have been a lawyer. I think it is some thirty years since I commenced reading law; but I have not got my mind up to that point of such very profound admiration for it. I think there is considerable humbug about it anyhow. And I think sometimes the effort is, in the words of a distinguished poet, to "tangle justice in the web of law," and that it is frequently effectual. I have no wish to degrade or undervalue the profession; but because I find the intervention of law, and lawyers and courts is necessary in certain cases, I am not to be misled into the opinion that it is necessary in the simplest and plainest cases. I believe these justices of the peace are fully competent to discharge all the duties that this section proposes to impose on them. I know, sir, gentlemen tell us about this new law—about a man going into court and filing a notice and all that sort of thing. Why gentlemen, this is just one of the subterfuges from the east—one of those palliatives always intended to keep up that obnoxious institution. And when I say "obnoxious institution," I am warranted by the book. I say that in going around through the district as a candidate for the convention of 1850, I do not remember to have seen a single individual who did not say to "down that county-court system." Not a man who was for the court. The delegates were so instructed then; they are so instructed now. I did then, and am doing now, my best to effect it, sir, I have a little record of some remarks I made on that occasion and that some other gentlemen made and I propose condensing what I have to say on that head. I allude now to the course of legislation to which I have already adverted. The argument had been for the alleged measure in favor of the county court that "it would bring justice to every man's door." I asked them:

"What did your legislature do some years ago? Finding that they either did not bring enough justice or that they did not bring the right kind of justice 'to every man's door,' or for some other cause, they established the circuit courts in every county and

brought justice in that way and perhaps a better kind of justice 'to every man's door.'"

Again, I remarked, sir, that these courts, except in the cases alluded to, were not to be trusted with the trial of felonies; "and why, if they are so very competent to administer public justice; if they have peculiar qualifications elevating them far above the judges of the circuit courts and placing them on a par with the judges of the Court of Appeals, why" I asked "has the legislature taken away from them the trial of felonies?"

"Take another question: the jurisdiction of the circuit courts was at first confined to controversies involving upwards of fifty dollars, but by the code which became the law about a year since it has been reduced to twenty dollars, or made concurrent with that of the county courts. Now if there was so much faith in these county courts as gentlemen would have us believe entertained throughout the community and those who represent the public opinion of that community, would the governmental majority in the legislature—a majority of eastern members have thought it necessary to bring down the jurisdiction of the circuit courts to a level with that of the county courts?"

Then I sought to instance this, that while their legislation was gradually educating the opinions of the people under these institutions, the county court were perpetuating them—and why? That whatever the county courts have been here in the west, in the eastern counties they are an institution that a certain part of that population cherish and will maintain in spite of all objections. So we found it then. But in reference, sir, to the circuit courts, I find one clause here alluding to a distinguished gentleman who was in that convention. It says: "It is proposed in the substitute submitted by the gentleman from Monongalia (Mr. Willey) to raise the jurisdiction of a single justice to fifty dollars, etc." The gentleman's proposition proposed then to raise it to fifty dollars in a specified class of cases involving rather questions of fact than of law. The reason for it, in my own language, as they were borne in on my mind at the time, were:

"As to cases involving more than twenty dollars, which it is alleged must according to the Constitution of the United States be tried by a jury, there can be no difficulty, as a magistrate will have a jury summoned and arrange to try such cases in the country."

I have cited above the gentleman from Monongalia in the convention of 1850 in aid of some plans I was endeavoring to enforce on that convention, and which I have been endeavoring to enforce

on this. The proposition there was not precisely, I believe, but very nearly what it is here. I think detinue and trover were in it. Here is the proposition of the gentleman from Monongalia:

"Justices of the peace, elected as aforesaid, shall have jurisdiction of all actions of debt, detinue and trover where the value in controversy shall not exceed.....dollars."

Assumpsit, which afterwards we endeavored to fix at fifty dollars, was supposed to be included in "debt." So I believe it stands precisely as we have it here—assumpsit, debt, detinue and trover.

I do not wish to detain the Convention any further. I have not felt it my duty to speak altogether as chairman of the committee but also as a friend of the township system to try to present this section to the Convention in its true light. I say again I am ready to accept the judgment of the Convention on this section whether it fails or not; but if it fails it must be taken out bodily; and if no substitute of the same or similar effect is introduced in lieu of it, I shall consider that the whole township system has received a blow in its vital parts and we shall not derive from it the benefits we anticipated.

Before I sit down I should like to call attention to the comment of the member from Marshall, who I regret is not present here, who tells us about the complaints made out of doors about the enormous number of officers we were creating with this system. The gentleman from Preston told us on that occasion how many justices they had; and I find that, as far as we have got, in this report we have cut off twelve officers in the county of Preston. Things are stated just in that inconsiderate way. It is reported that we are increasing the number of officers and the expense. I apprehend in both complaints, or in the complaint as to increase of expense, it will turn out as it has in reference to the increase of officers. Instead of increasing, we have diminished the number in the county of Preston. I apprehend the same ratio may obtain to the whole expense of administration. I do not know with so much certainty what may be the comparative cost of bringing a suit for one hundred dollars; but if the suit for one hundred dollars, or any other amount, for a plain case is before the magistrate in the country, it will be this much cheaper, that this array of witnesses the gentleman conjured up, who would be as necessary in one case as in the other, will not have, in the first place so far

to go and thereby the expense will be less to them. If they should even have to go as far, they will not have to go so often. The case will be decided within a reasonable time; and there will be that other saving which quick justice is worth over slow justice. In this way, while the actual plaintiff and defendant, according to their success in the case, may have more or less to pay—which is not so important—yet the general public are to be saved money by the institution of these courts and by allowing them a reasonable jurisdiction at whatever sum the Convention may choose to fix it.

I again call the attention of the Convention to the fact that the first question to be taken is on the striking out of this whole section; and the second question will arise then on limiting this jurisdiction. If the proposition of the gentleman from Doddridge to strike out is defeated the section will again be in the power of the Convention for amendment; but if there are any particular things in this as reported by the committee which gentlemen object to, as particulars, why, just defeat the motion to strike out and let us go to work and amend it as best we can. When the wisdom of this Convention has acted, I apprehend very few will be found to object to it as a whole.

MR. SOPER. I ask the indulgence of the Convention a few moments. I would not do it, but that the issue I made was voted down last night and if it is in my power to advance any idea or state a fact it will set the gentlemen of the Convention to thinking so that they will arrive at a just conclusion as to the performance of their duties in relation to this jurisdiction of justices of the peace, I shall have attained the object I have in view. I have no prejudices, sir, for or against lawyers, and I am sorry to see intimations of that kind thrown out on the part of members within this Convention. I am ready to concede, sir, and I believe the fact to be, that among the legal profession are some of the most honorable and useful men in the community, while at the same time I must confess that there are within that class individuals who are without principle, who are the worst kind of pettifoggers and who are productive of misery wherever they are so unfortunate as to fall. I attribute to that a great deal of this cry in the community against the profession of law. They are the exception to the general principle or rule. They are not the rule or the principle itself.

Now, sir, let us look at this matter as it has been presented by the gentleman who has addressed the Convention this morning. He began by saying that on promissory notes, plain claims a judgment might be attained without the intervention of lawyers. That is true, sir. There is such a provision in the Code, and I learned the other day that it originated on the part of laymen for the purpose of dispensing with the aid and assistance of the lawyers in attaining judgment. If so, sir, I concur with some gentlemen who have spoken here that whenever men who are not lawyers undertake to legislate for the purpose of diminishing their business they must inevitably fall into difficulties that have a tendency to increase it. I believe that to be true from the experience that I have had myself. But, sir, that is probably one of the subjects which, necessarily result out of this continual trying to remedy what is considered inconveniences. The gentleman from Kanawha gave a full answer to the proposition made by the gentleman who first addressed us in order to show that that attempt to get a cheap judgment on a plain promissory note, when it came into the court it was by the ingenuity of the lawyer entirely upset. Well, now, sir, the lawyer that would go against a layman on a plain promissory note is what I would call a pettifogger, unless in the first instance he had informed his client that if he honestly owed the money he ought to pay it. But I find, sir, that although you may go into Ohio and if you please Kentucky you will find your pettifoggers in justices' courts; you will find them also when you go into the county court. Why, sir, here the individual presents the plain note of land; the signature cannot be denied, unless you take advantage of few words, throw him out, put pleas of proceedings on him and compel him to go and employ a lawyer and bring a suit. I only show you, sir, that in this system of going into the circuit courts where there is the largest accumulation of cost when the citizen attempts to go there without the aid of a lawyer in a plain, palpable case and lays his note before the man, if a quibble of law is raised he is thrown out of it all, sustains a great injury, and that ought to defeat the proceeding. Now, as to the expense. One gentleman says your notice must embrace your claim and it must be served and it will cost probably fifty cents, which is the sheriff's fee, I suppose, for serving. Another says you can go yourself and collect the sum and then get an affidavit of service drawn up, I suppose costing twenty-five cents. But, sir, I start as to the expense by saying you can get it into court for less than fifty cents. Still when you appeal it there you have

got to pay your fees. This is not applicable as yet to cases in justices' courts. That is a dollar; and then there is the list of your clerk's fees, and when you get your judgment on your note, you have got something like fifty. Well, now, sir, you go into a justice court and if there is no defense there you will get your judgment on that note for one dollar, embracing all the costs. But that is not the chief advantage in the matter. According to the provisions of the code you cannot get a judgment there short of sixty days. Well, now, I have got a note, if you please, of fifty or a hundred dollars against an individual and he is in embarrassed circumstances; some doubt about the security of it. How shall I get a completed judgment? If I have got to resort to the courts of record, county or circuit, under your Code of Virginia here, why I shall be thrown back at least forty days, and upwards of forty days inevitably thrown back. If I can be permitted to summon him in a justice court I can obtain my judgment if the same law is to guide as to the notice within thirty days. But I have known a party to summon a man in the morning and collect in the afternoon. I believe that to be wrong myself, but why, that is the law. I can obtain my judgment—my test copy of it—go to the county clerk's office, file it and there make it a lien on his real-estate, and if I get it through I can issue execution on it. Now, there is the advantage. The mere costs are nothing compared with the advantage that will result to the individual in getting his speedy judgment and getting it secured as it possibly can be by all the aids the law will give him.

Well, now, sir, as to litigated cases, we have heard a great deal spoken here. I admit my friend sitting before me, from Lewis, gave us excellent dissertation yesterday on the value of special pleading; but, gentlemen, special pleading has gone out of date; and I am very glad of it, for I saw the evil consequences of it. I know shrewd and astute lawyers are advocating it; but it has, in a majority of cases, I venture to say, proved injurious. I bring my suit; my friend from Lewis appears and puts in a special plea. Whether it be true or untrue makes no difference. I am called upon to put in a replication. He turns and rejoins to my replication. I am called upon again to answer another set of facts and put in a rejoinder, and then a third rejoinder and rebuttal, and all this kind of process which the special pleader understands all about. What is the result? Instead of a material issue you are met by a demurrer, or if you go to trial on that material issue you appeal and go to court. Now, sir, in trying to get rid of that, we get into other

difficulties, because when we come to the learned judge on the bench. We get the most distinguished men among us, men of age and experience. But they are wedded down to the system they have always studied and they are not the greatest opponents of anything like reform that may be met; and hence, with all their learning and ingenuity on this new system and oftentimes lead off into a great deal of entanglement. Here is where the difficulty is. Not that I am going to blame; for we are so constituted that we cannot resist these biases, and predilections, favoring projects and business we have been accustomed to.

Now, sir, a good deal has been said about going to your legislature. When I first became acquainted with law in Virginia I found the jurisdiction of justices amount to twenty dollars. Well, it was but a short time before it was raised to thirty; and then again it was raised to fifty. Now, what does this show? Why, that in the minds of the community there is an unsettled feeling on this subject and desire to increase the jurisdiction of justices of the peace. Now I learned here that the committee adopting the amount established by the Legislature of Virginia had fixed this amount at fifty dollars and that the present legislature had increased it to one hundred dollars, showing this feeling is yet influencing the community.

MR. WILLEY. Will the gentleman allow me to ask him whether that is the only legislation in regard to the subject? As the jurisdiction has been extended, has not also, what I conceive to be absolutely necessary appendant to it, the right of the party, if he sees proper, to have it certified to the court?

MR. SOPER. I suppose that portion of it has not been changed; and it is this, sir, that where a party comes before a magistrate with a claim exceeding twenty dollars has a right to direct that to be certified to the county court for trial. That undoubtedly is the provision.

MR. WILLEY. This constitutional proposition makes no such provision.

MR. SOPER. We are not through yet with it and the legislature will direct the mode of proceedings, I apprehend, under it.

Now, sir, about leaving this thing to the legislature. When I first became acquainted with the law on this subject in Virginia, it was as the gentleman from Wood has informed us the jurisdic-

tion of justices of the peace was confined, as we find it in the report of the Committee on the Judiciary to actions of debt, detinue and trover. There is where they were confined. I do not wish now to go in to show what I have discovered as denials of justice under the exercise of this jurisdiction by the action and conduct of magistrates. I would not, on this account, were I ever so opposed to this section, I would not leave this matter to the legislature. Let me call your attention to what the Code now is as to the jurisdiction of justices of the peace, not what it was ten years ago. It is this: I beg gentlemen to take notice and particularly this: we combatted the proposition as to the danger resulting from putting the action of trespass in your report here. Now, sir, it is this: "Any claim to property," first. The justices shall have jurisdiction as to any claim to property. Now, I ask legal gentlemen whether that claim to property, unqualified, does not extend to real estate as well as personal? Real estate is property; personal goods is property; money is property. And there is the expression: "Any claim to property," the value of which does not exceed fifty dollars the justice is given jurisdiction to try. Now, sir, will not that embrace all the actions of trespass you can possibly imagine? Now, further included after property: "or to any debt"; "fines limited to twenty dollars." Now, you will take those general expressions, and what would they not embrace? First, all controversies about property; second, all cases of debt; third, all cases of fines; and lastly, as if there should be anything indefinite, "any other claim for money." Now, if that is the kind of legislation we are to have at the hands of our legislature, I humbly submit to this Convention that they ought to be tied down within certain bounds over which they should not go, for the safety and protection of the rights of the citizens. Now, gentlemen suppose this proceeding before magistrates. Gentlemen talk here as if it is to be a kind of wrestling match, a kind of lottery. Why, that is not so, gentlemen. If your legislature do their duty, it will prescribe a course like this: a summons shall be issued returnable at a certain hour in the day—not returnable on a day. A man may come early in the morning and have to remain till night. He may come in the middle of the day and be told that judgment has been rendered against him and the next news will be a justice away and a constable coming with an execution. But they are now returnable on a day; and I have known men waiting all day, running around to try to find the magistrate. Now, I would do this: I would have, by legislative provision, the summons made returnable at a par-

ticular place, at a particular hour; and then I would make a provision giving the parties one hour to appear, so that they would understand it and come at the time.

I am for having the jurisdiction of the magistrate not exceeding one hundred dollars, including the interest to be added to the principal and made part of the debt. The legislature can reduce it whenever they please. They may say in litigated cases the magistrate shall not try a case exceeding twenty dollars, or fifty dollars. The legislature will have the whole control over it to rectify any evils that may arise.

MR. HERVEY. Where does the gentleman find the authority for the opinion that the legislature may reduce the jurisdiction as to amount?

MR. SOPER. Why, whenever you qualify by the word "not exceeding." If you simply said it should be one hundred dollars, the legislature could not reduce it; but if you say "not exceeding" a hundred dollars, they are at liberty to make it any amount from one hundred dollars down.

I see the hour of our adjournment draws nigh, and I will not detain the Convention any longer. I have hastily called the attention of the Convention to what I suppose some of the leading considerations in this matter which, so far as I am concerned have satisfied me that I should vote against this motion to strike out, at all events until we get our report completed; and then, when we can look at it as a whole and cannot fix it to suit a majority of the Convention, they must dispose of it as they in their wisdom see fit, and I shall be satisfied. I agree with the chairman of the committee that the friends of the report should be allowed to amend it and put in acceptable shape if they can do it.

MR. STUART of Doddridge. I do not wonder that these gentlemen desire to go into detail, because they are most felicitous in detail; but if we are going into these details, I desire to know and we will move our families here, for we shall be here for the next three years. That is one reason I submitted the motion I did to strike out. But if the Convention overrides that motion and insists that we shall go into these details as indicated by the gentleman from Tyler and I have got to discuss the details, which would be proper for legislation, I want to bring my family here and stay here twelve months at least.

MR. WILLEY. Would it suit the views of the gentleman from Doddridge to modify his motion so as to make it applicable only to matters of jurisdiction and leave the township arrangement as it is? My only objection in point of fact is to the jurisdiction of the justices as to how they shall operate, or within what limits.

MR. STUART of Doddridge. As to their territorial privileges I do not want to interfere with it at all but only in fixing the jurisdiction of the justices of the peace; and if the gentleman from Monongalia would indicate what amendment he would desire to propose, I would certainly agree to it, because that meets my views exactly.

MR. HERVEY. I hope the question will not be pressed, but that every member on this floor will have due courtesy extended to him. I hope the question will not be pressed.

MR. WILLEY. So far as I am concerned, I am very willing to allow the friends of the measure to perfect it to the full extent. That is the ordinary mode. But at present we have to abide by the motion as it stands. It would suit me, and seems to suit the gentleman from Doddridge also if his proposition could be so modified as to make it have reference only to matters of jurisdiction given to the justice. I confess in looking at this section it seems to me they have jurisdiction here to any amount, ten thousand dollars to fifty thousand dollars. It is only in cases of appeal; where the matter is over fifty dollars, subject to appeal. As to the amount of the jurisdiction, I cannot see that there is any objection to it.

MR. VAN WINKLE. It is intended, at any rate, to be subject to appeal in all cases to the circuit court.

MR. WILLEY. Be that as it may, I would like, if the motion is to be pressed by the gentleman from Doddridge, meeting his concurrence, that it be confined entirely to matters of jurisdiction and not to the residue of the section, territorial authority and so forth. To that I have no objection at all. If it be necessary to the township system it ought to be there. I have not had the benefit of the discussion at all and have no opinion upon it; but I have confidence in those who have. My only objection to this section is to giving these matters of jurisdiction to justices. How and within what limits he should exercise whatever authority may be given to him is not the matter of objection to me. I will just add a word

of personal explanation. I had hoped that the recollection of my friend from Wood would have relieved him in his quotations from me in reference to my position in the convention of 1850, to have mentioned to this body that I had nothing to do with that report, as he very well knows. He was called very suddenly to the legislature on the day of the passage of the Northwestern Virginia Railroad Bill, as a lobby member, I believe there, and entrusted to me his own production—his own offspring entirely. He will remember that I took good charge of it, nursed it well, had it baptised in the convention and even gave it the name as the records of the debates will show, as having been propounded by the gentleman from Wood (Merriment). Although I so offered it myself, it went on the record as the proposition of the gentleman from Monongalia.

The hour having arrived, the Convention took a recess.

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AFTERNOON SESSION.

The Convention reassembled at the appointed hour.

Mr. Dering rose to a point of order, that Mr. Willey's proposed amendment was not in order.

MR. POMEROY. I think the section can be amended after the vote is taken. We are certainly prepared to take the vote on the question before us, and then any other amendments will be in order.

MR. STUART of Doddridge. I merely desire to accommodate myself to the views and wishes of the gentleman's colleague here. It is not very material to me, because I can vote here intelligently on the question now before this body.

MR. HERVEY. If I understand the question before the house, it is this: I believe the motion of the gentleman from Doddridge was an amendment—

MR. POMEROY. A substitute.

MR. HERVEY. It seems to me perfectly competent to offer an amendment to that amendment.

THE PRESIDENT. The Chair would be disposed to change its opinion. The Chair is of opinion that time would be saved very much by allowing a modification and would be glad to see the Convention adopt a course in all its proceedings that would effect a saving of time.

MR. DERING. I think we would save time by taking a vote, and if the gentleman afterwards wishes to submit any modifications and substitutes it would of course be competent to do so but not at this stage of the proceeding.

THE PRESIDENT. The question is on the substitute.

MR. STUART of Doddridge. I do not intend to argue this question or detain the Convention. I desire to say that it does seem to me that the gentleman from Wood is trying to get up what I call a false issue, trying to impress on the minds of this body that we who are friendly to striking this section out are making war on the townships. I know the gentleman takes it considerably to heart; it is quite a pet of his, and I must assure him that I am not making war on the township principle. I desire to see it perfected as much as possible. But I understand these townships are in various states here—neighboring states and that the very provision I propose to insert is in the constitutions of those states which have these townships. Consequently, sir, it cannot be asserted we are making war on the townships and that we are seeking to destroy this report. That is not my intention; but I think that section ought to be stricken out and the powers and duties of these justices should be prescribed by law, as it has been in our state heretofore and as it is in nearly all the states of the Union. That is my understanding. I do not want to get up a false issue trying to impress the members of this body that we are making war on the principle. Now, sirs, I do not see that I am either committed or non-committed to this provision of townships, but I may be permitted to say, as I said in regard to the law, that it was considerable of a humbug in many instances; and I really am inclined to think this system is a considerable humbug, but it may do all right. I am willing to investigate it; but I just return the allusion of the gentleman back and give it as my opinion that it is right smart of a humbug. But so far I have not objected to it, and the object of this amendment is not seeking to destroy that provision of the report—not in the least. My only object in offering to strike out was to reach the jurisdiction of the justices as fixed in this section.

I had no intention of reaching anything else; and I think the question to be decided could fairly come up and we could take it first on the striking out and then, if the Convention was in favor of striking out, we could put in its place whatever you please. I hope this body will not think so badly of the lawyers as they have heretofore. Some of them are honest. We have found one honest lawyer at least—that is the gentleman from Tyler. He when clients come to him thought the lawyer ought to investigate whether they owed the debt, and if he did told him to go and pay it. I must admit that I cannot plead guilty to the charge of being an honest lawyer, because when my friend comes to me and says his neighbor is seeking to get a judgment against him and if he obtains the judgment it will be a great injury to his property—that he wants delay—I do not believe there is a lawyer in this broad land that will not seek any remedy he can to get the delay desired.

Now, sir, let me say, in corroboration of the statement of the gentleman from Kanawha, that the law as it now stands gives the justice of the peace jurisdiction to sums of one hundred dollars. That bill was passed, not at this session but at our last session. That bill was framed by myself. Now, I must say that I am not opposed to the jurisdiction of justices of the peace even to a hundred dollars, for I went for it. I am in favor of it now, but I do not want them to put a provision in our Constitution which is unalterable and gives justices of the peace exclusive jurisdiction of plain matters. Where there can be no question of law arise, I do not know but the justice might have jurisdiction even exceeding that amount, but I do not want to force a man to go before a justice of the peace to seek a remedy there for unliquidated damages and on questions of law, the facts to be determined by that justice, because even the law as it existed prior to this last session of the legislature gave jurisdiction of fifty dollars. Well, sir, even then, in nine cases out of ten, parties never brought their cases before justices of the peace.

MR. VAN WINKLE. It was not the intention to exclude the concurrent jurisdiction. The committee thought that would be fixed by the report of the judiciary committee in the jurisdiction of the circuit court.

MR. STUART of Doddridge. Please your Honor, sir, we have to take things as we find them. You may adopt this and may not adopt something else, and if there is anything here objectionable, we ought to correct it at once, because we may adopt it and it may not

thereafter be altered. You want me to accept a thing I am utterly opposed to from the fact that hereafter, at some future time, we will modify it. Then, sir, I say that in nine cases out of ten, even the jurisdiction extended to only fifty dollars, the parties, where question of law and fact arose, never brought their suits before justices of the peace, and if they did it was always done in such form that the party who brought the action when he got up to court was the sufferer. He was thrown out for some informality. Now, this section here gives the right of appeal; but let me illustrate how it will operate against even plaintiffs who bring these actions. The party comes to the justice of the peace and gets his warrant, and say the amount involved is fifty dollars, in action of assumpsit. The defendant goes to a lawyer, as lawyers heretofore have been called in. I have often been counsel and desired to go before a justice of the peace. I say, no, sir; it is not necessary to go there; that this justice of the peace is not acquainted with the law and that facts that should control this case, and I am not willing to act where there cannot be a proper investigation and understanding. Well, sir, I would tell him, you have the right to appeal, and if they will carry this thing on go before the justice and take an appeal, and we will always reverse it in the appellate court. I believe I never failed in my life, because there was always some informality. Upon an appeal the case is heard *de novo* before the appellate court. They do not investigate the facts brought before the justice in the country, but as though it never had been heard. They hear the testimony and the judge renders such a judgment as the justice should have rendered. He either confirms or renders such a judgment as should have been rendered. Well sir, if the defendants make no defense before the justice, all they have to do is to reverse the judgment below. But then there is that below, and he has to pay all the costs of that suit. I would say to my client who wanted time, I will counsel you to make no defense; let the gentleman take his appeal and then come in and make his defense and reduce his judgment and you will have just as much time as you want, and make the plaintiff pay the costs. Unless the gentleman from Tyler will go into details and legislate, you will have to leave these things to the legislature.

These are my views on this question. I do not desire to detain the body, for they have been detained too long, and the arguments of the two gentlemen who have spoken on this subject are conclusive and satisfactory to my mind.

MR. SOPER. The gentleman made rather a personal allusion. I do not profess to be more honest than my neighbors; but in the course of my profession, when quite a young man, I happened to be in attendance at a county circuit where there were some very distinguished gentlemen of the bar, and among the rest Gen. James Talmage. I recollect hearing him remark that he had a client for whom he put off his cause, that is twice from two circuits. He came to him and wanted him to put it off again on another time. This had to be done on an affidavit of facts. The General said to him: "you cannot put off this cause; there is no ground for it." The General recapitulated the facts and told him the truth of the matter was he could not get it. "Well," says the man to him, "Gen. Talmage, you sit down and write like a lawyer and I will swear like a man." The General told him to go and employ another man, and he had to employ another counsel. I suppose my friend's clients were of that description: He wrote like a lawyer and they swore like a man!

MR. DERING. I know the Convention is wearied with this debate. It has been long and elaborately discussed and I do not expect to add any light in the present discussion by the few remarks I shall submit on the present occasion. But it seems to me that the gentleman from Doddridge has left it, for when I offered my proposition I inferred from what he said that he was with me; and I know very well from the remarks made by the gentleman heretofore on other questions that he is one of the people's men. Now I ask him to co-operate with us in benefiting the people by giving us this extended jurisdiction. But I do not rise to object to the modification my colleague wishes to substitute for the purpose of being captious at all; but I am very well aware of the ingenuity and eloquence of my colleague; I am very well aware that his substitute may kill this whole thing, and we would then be deprived of having the benefit of a vote on the pending proposition. Now, sir, it is singular that the gentlemen around us will make so many objections to the extension of the jurisdiction. Because this is the main point at issue, after all. That is the point to which my colleague objects and the gentleman from Doddridge objects.

MR. WILLEY. I am not making one particle of objection to the extent of the jurisdiction. Not from the beginning. I say it ought not to be in the Constitution.

MR. DERING. Now the gentleman, my colleague, said this morning—and I always pay great deference to his opinions—I

know, sir, that he knows better about these matters than I do—my colleague, sir, meaningly said that this Convention had not all the wisdom of the world. That fact is patent to us all; and I am willing to acknowledge here that I am one of the humblest members of this Convention, to acknowledge my poverty in wisdom; but, sir, we are all the representatives of the sovereign people of West Virginia, and we have to stand up and answer our constituents on our individual responsibilities, and we are to them responsible for the course we shall take. I do not doubt the pureness of motive and the honesty of my colleague. Not for a moment. I have known him too long and well to entertain any doubt about the purity of his motives or the honesty of his intentions. I have the most unlimited confidence in his integrity and intelligence; and, sir, when he draws upon this fact to say that this Convention should not extend the jurisdiction of magistrates: I hold it is an impeachment of the intelligence of the community, the legislature or any other body of men that may assemble in this country. Why, sir, the legislature of Virginia has adopted, as the gentleman from Doddridge tells us, the doctrine that magistrates shall have jurisdiction up to one hundred dollars. We have endorsed that action and assented to fixing it permanently in the Constitution, that the people of West Virginia may see that that is to be one of the permanent regulations. The Legislature of Ohio also has endorsed this action. They have extended jurisdiction to that amount and perhaps more. It is prescribed by law. The legislature of Pennsylvania, New York, and, indeed, almost the whole number of the free states of this Union have adopted this matter of extending the jurisdiction of magistrates up to that amount, and some of them still more. Then this Convention has the endorsement not only of our own legislature but of Ohio, Pennsylvania, New York and all the various states coming in and endorsing us in fixing permanently in our organic law the clauses that will fix this for all time to come. Let us then follow in the wake of these distinguished gentlemen in the various state legislatures. Let us carry out this project, and I am sure from what my colleague says he will not object to it. It is true he and other gentlemen object that this thing of extending the jurisdiction of magistrates to one hundred dollars is carrying out in detail in the Constitution matters that had better be left to the legislature. Let me put an estoppel entirely on this whole doctrine of legislative detail in the Constitution. The gentleman from Ohio, who is not now in his seat, offered an amendment which was adopted by this Convention to the

report of the Committee on the Legislative Department authorizing the legislature of West Virginia in all time to come to amend this Constitution when they in their wisdom saw proper to submit amendments to the people for ratification. Why, sir, did not that put an estoppel on this whole doctrine that this is a fixed fact when it is once in the Constitution under no circumstances can we change it? I admit we may not have to change it until we have another convention. It comes precisely within the provisions of the very legislative body that the gentleman asks it to be referred to. Whenever under the operation of this system it is found to work badly—whenever the people get tired of its workings, why then they will instruct their delegates in the general assembly to submit amendments, and it can be done. That is the complete estoppel to the doctrine that this thing will be fixed irrevocably for all time until we assemble another convention. The judiciary, of which my colleague is a member has brought in a report, part of it drawn up by him, contains a clause that goes as fully into details as this for justices of the peace. Listen for a moment to the reading of the 7th section of the judiciary report and see if that does not go into details in reference to that branch of the judiciary as much as ours does in reference to the justices.

"Section 7. The Supreme Court of Appeals shall have appellate jurisdiction only, except in cases of habeas corpus, mandamus and prohibition. It shall have no jurisdiction in civil cases when the matter in controversy, exclusive of costs, is less in value or amount than two hundred dollars, except in controversies concerning the title or boundaries of land, the probate of will, the apportionment or qualification of a personal representative, guardian, committee or curator; or concerning a mill, road, way, ferry or landing, or the right of a corporation or a county to levy tolls or taxes; and except in cases of habeas corpus, mandamus and prohibition, and cases involving freedom, or the constitutionality of a law."

There is detail, gentlemen, that goes into the whole system of our legislation. That enters into the whole system and policy of this government. Why, sir, it is a bill almost as long as my hand of details; and yet the gentleman is excepting to details in reference to justices of the peace. It seems to me, sir, that if they would be a little more consistent they would not object to this little necessary detail in reference to magistrates. Sir, the intelligence of the Convention can very well see that we are consistent in this and that we are only following it in the lead of the distinguished

gentlemen who have introduced the judiciary report into our midst. I am in favor, sir, of giving the people the right to go before the magistrates with all their small debts and of controverting there and not being put to the trouble of riding to their county towns and consulting lawyers and being involved in long tedious lawsuits for the purpose of protecting their rights. I am in favor of bringing justice right to their doors and making it as cheap as possible and of giving it to them in the most speedy manner possible. I hold, sir, that in giving magistrates jurisdiction to one hundred dollars you are accomplishing all this. You make justice cheaper and make it speedier and bring it right to the doors of your fellow-citizens in the various townships. Why, sir, we have had a signal illustration here to-day of what befalls a man when he goes into court. He goes to his counsel, who in most cases tells him his case is a good one. His adversary goes to another and these counsel go before the court and get the case so mixed up and so much dust thrown in the eyes of the jurors that they do not know which is right and which is wrong. A justice of the peace is selected for his intelligence and his integrity and desire to promote the ends of justice. In ninety-nine cases out of a hundred he will decide the case so that all parties will be satisfied. And then, further, if he thinks he has been aggrieved by the magistrate he can take an appeal to the circuit court, there to try whether he can get justice or not. I hope we shall yet have the vote of the gentleman from Doddridge, and I shall not despair of my colleague that he will yet be found voting with us for the extension of the jurisdiction of magistrates. And I trust that this Convention will weigh well the proposition before them. I rely on the intelligence of this Convention to look at the question and vote on the proposition as it shall be presented to them after a little. If you, gentlemen, vote for this proposition you strike down one of the most important sections of this report of the Committee on County Organization. If you strike this out you may as well strike out the whole organization, for upon this, in my opinion, much does it depend. And I think it will be a test vote as to the sentiments of this Convention in reference to the county organization presented by the gentleman from Wood. I trust, sir, that we are all in favor of giving the people justice cheap and of putting it as close to them as possible, and making it as speedy as possible. Let that be our motto. Let us look straight at this question and not be drawn aside by side issues. I know the legal gentlemen have great advantage of us; but I look to the bar to help promote the ends of justice. As

I stated on this floor nine-tenths of the people of Monongalia county and of West Virginia are in favor of extending the jurisdiction of magistrates to one hundred dollars. As the gentleman from Wood says, this jurisdiction is concurrent with the courts. The distinguished gentlemen who have been opposing us, I hope with that assurance from the gentleman who drew up this report, we will have their concurrence and support in extending this jurisdiction to that amount.

MR. HAGAR. It does seem to me there has been a great deal of unnecessary argument. The whole strength of it seems to have been with regard to the extension of the jurisdiction of magistrates. I understand it is in reference to the amendment of the gentleman from Doddridge. Now if so, all this is almost lost. There will be another time that this may be discussed to the satisfaction of the people. It is like my friend that has just spoken said in reference to cases that come before the juries when we have the most celebrated lawyers. They will talk back and fore until they get the jurors confused until themselves cannot decide.

By and by the question will be taken on this amendment, and after it is voted down the extension of the jurisdiction will come out in its proper place.

MR. SIMMONS. I call for the yeas and nays.

MR. HALL of Marion. I was unfortunate in not getting a recognition from the Chair.

THE PRESIDENT. With leave of the house.

MR. HALL of Marion. If the President please, I desire in future to exercise my rights here without "leave of the house"; and if I am told I am out of order, however much I desire to speak I will not avail myself of that kind of leave.

MR. VAN WINKLE. The question is open to discussion until the negative is called.

MR. HALL of Marion. I had not intended to say anything on this question. I do not design now to make a speech but to refer to one or two points in this matter that strike me that in the labored and lengthy arguments we have had—the very able arguments—have not struck me as being brought to the attention of the Convention—or, rather if brought to their attention, this, as suggested by the gentleman from Doddridge, has been most effectually

smothered, covered and concealed. I concur with the gentleman from Boone in the idea that an immense amount, a large portion, of the argument on this question has certainly been aside from the question at issue. I understand the question to be simply whether we shall fix this matter in the Convention or whether we shall leave it to be fixed by the legislature. If I apprehend this question after the debate we have had, that is the question. It occurs to me, sir, that in that view of the case, unless we knew that the legislature would not fix the jurisdiction as contended and desired upon one thing or the other, there is no force in any argument on that question whatever. That the question rests upon this principally; whether it is judicious, whether it is wise, whether it is necessary and proper, that we shall fix this thing in the Constitution. And by that means turmoil arises without reference to what may be its practical workings; or whether we shall allow the legislature, who I presume will know something about the will and wishes of the people on this question, when they find its practical workings inefficient to unfix and rearrange this question. The latter is what I desire to do for that reason. Unless we are to sit here from twelve to twenty-four months filling in every sort of matter we can imagine, and close up by adding to that a code of Virginia or Congressional Globe, and a London Punch, I say unless we do that it is absolutely nonsensical for us to attempt to go into these details. If we cannot trust the legislature, let us abolish it. All power is in us—and all wisdom if we are to judge and estimate ourselves by our acts on a preceding occasion. And therefore why not incorporate all these things and abolish the legislature and tell the people we have legislated for them down to all time? There is no use of having this assembly of silly persons come here and talk about what we have done when we have legislated them through, if they have come right from the people. The gentleman from Monongalia says that his colleague knows more about this than he does, and yet he fights him with all the pluck and courage possible and leaves him no loophole to get out.

MR. DERING. I beg your pardon—

MR. HALL of Marion. It is a deduction. I know he does not feel it in his heart, and he is driven from that point and he cannot avoid it.

MR. DERING. It is not a fair deduction.

MR. HALL of Marion. When he admits the one fact, he is bound to follow or be driven to take hold of either of the horns of the dilemma. But he says there is no objection to incorporating everything in the Constitution because you can change it whenever you please. You don't have to come in a convention; and yet the statement is made in another quarter that it is very important to incorporate it in the Constitution to have it fixed so it shall not be changed. But if you incorporate it in the Constitution it is not fixed. It does leave it to shuffle and deal, as I would term it. Now, in the name of conscience, what do you want to incorporate it for, unless it is to give this useless body something to quibble about? Nothing else could grow out of it. Fix it permanent, and don't fix it permanent. Because you have provided it so the legislature can change and unchange it. Well, now, there is no objection to this, for whatever they do you will have to harass the people from time to time; and you will present the Code, and the Congressional Globe, and whatever else we can rake up, in about a year, to the people to vote on. All the amendments can fight on them *ad infinitum*. Our people are tired of these things. They want regularity in this matter; and when they enter on a new matter, they want things so arranged that without harassing the people they can correct these evils.

It is said this 7th section is not designed to limit or prevent the jurisdiction of the circuit court; that it may be concurrent. Now, I care not what you make the jurisdiction of a justice. I am a lawyer—that is, a sort of a lawyer—an apology for one. But I am not yet such a hungry one as to be under the necessity of making any litigation; but if I were, I would vote for this proposition. I claim to know something about the practical workings of like propositions; and I think there is a concurrent testimony of everybody who has had any opportunity of knowing. The gentleman from Monongalia says he has no knowledge of these things, but we know he has such knowledge as his every-day business gives.

MR. DERING. Why do not they repeal the laws in the various states where they have tried it for a long series of years?

MR. HALL of Marion. I understand that under the Pennsylvania law they have concurrent jurisdiction. I apprehend, however, whilst they have the extension of jurisdiction, they have a provision that remedies it; and I have not heard anybody objecting to the jurisdiction; I do not care if you extend the jurisdiction of a justice to ten thousand dollars, and I am one of those who will

vote to extend it to fifty thousand if you will not compel people to use the inefficient tribunal and will leave them to elect. We are told this section does not prevent jurisdiction of the court. I do not know what the intention was, but evidently the section does. And it does more. I believe the gentleman from Monongalia (Willey) referred to the fact by way of a question; and I have looked at the thing and I think it will bear but one construction and that is that this section gives the court no jurisdiction, excludes all other jurisdiction, opens up the way to abolish all other courts. Not only so, but it provides that if the amount in controversy does not exceed fifty dollars you may have an appeal, but if it does, there is no appeal. That is, if you get enough in the controversy before the justice, he cannot err; or if he does, it must remain so. The section, I am satisfied, was intended otherwise and might be so modified.

MR. VAN WINKLE. The report of the judiciary committee, as I understand it, says that they shall have such jurisdiction as the legislature gives them. I will say that they should have jurisdiction down to fifty or twenty dollars or any other sum. But the report says they shall have such jurisdiction as the legislature bestows on them. The fact is the very forbearance of the Committee on County Organization until they learned the Committee on the Judiciary would not report according to their wishes, in leaving it to them, ought to be commended instead of found fault with.

MR. HALL of Marion. I do not design to find fault, because, as I before said, I know what the intention was, and whether it is here by a misapprehension or not I do not undertake to say. But I do undertake to say this, that if you give absolutely to the justices of the peace jurisdiction to the amount of a hundred dollars and provide elsewhere that the jurisdiction of the courts shall be such as the legislature may prescribe you have excluded them from prescribing anything below that amount. And whilst they look at one part of the Constitution, which says they shall have such jurisdiction as may be prescribed by law, you say in another that all jurisdiction to a certain amount shall be given somewhere else. Then you have placed it in the Constitution beyond the power of the legislature to prescribe anything below that amount. Now, so far as jurisdiction, whenever parties have their election to go before a justice or into court as heretofore, I have no objection whatever. The people can then be accommodated; they will have two tribunals, and whichever is the more efficient is the one they

will prefer. And each party has a chance, because if one brings his suit before a justice the other may carry it to the court. It can work no injury, and I do not care what the amount is. But what I do object to is this: I do object to go into all this legislation. If we do it in this case, we are to do it always, everywhere. I trust if we are to have a standing constitutional convention, as suggested, that we will not go to work now to make business for it, to annoy our people every time they are to vote on any question by requiring them to vote on amendments to the Constitution.

I have heard some such expression as a "people's man," used in this Convention. The people's man! I cannot comprehend just what is meant by that. I trust we are going to do our duty here in the exercise of the best wisdom and discretion we can bring to bear, looking to the interests of the people without pandering, without crouching or hunting about for what may be supposed to be the popular whim or idea. If we do not, I think our production will not be worthy of the body. That may not be the idea. It may be looking to the interests of the people. Now, if that be the idea I would place that construction on it. We can best subserve the interests of the people by leaving it to each man to elect and determine which tribunal he will take; and when you do that I care nothing about this question about jurisdiction. Because I think it would be destructive of the peace, prosperity and harmony of every community in which you would find the justices. These little vexatious squabbles would arise between neighbors; actions before the justice of the peace; some man has slandered another; some man has assaulted another; or they have got up some little squabble or something. And if, as the idea is here, we must carry the remedy to every man and tender to him—as it were, to his own door—the effect of that will be to encourage and get up these cases to the destruction of the peace, prosperity and best interests of the people in every community; to overload all your courts by appeals taken from the action of the justices. Now, that will be the effect of it. I would not encourage that thing. I heard gentlemen here argue, on the question of the formation of new counties, they were opposed to that thing; and that argument was used because they said it was establishing a court-house, places to hold your court all over the country and making it so convenient to people that you increased litigation. Well, there is some force in that argument. But when you carry justice around to every man's door—come, go now and pitch into your neighbor while you are mad; do not give him time to get cool; and once he begins he will follow it up to the last. The

great object then is the victory, and he will expend any amount of money, create any amount of destruction, any amount of ill feeling; and as I have suggested, the thing will almost invariably get to your circuit court or whatever court you may have. That would be inevitably so. Whilst there are some things that I would not wish to see brought before a justice at all, yet upon plain actions in mere matters of debt or those summary questions of a claim of one man against another, I see no evil that could arise from giving the justice concurrent jurisdiction, by giving whatever jurisdiction any gentleman may desire in the premises.

I trust it may be the pleasure of the Convention to strike out this section and leave all this, as proposed by this amendment, to the legislature. The legislature, after this Constitution goes before the people, will be sent here by the people; and I presume they will send men who will represent their interests; and they will be more likely to know their interest than even this body on that question; because it is a fact that will be admitted that we come here without knowing the opinions of our people on many of the questions that come before us in this Convention. And whilst that is the fact, and whilst we have a legislature—which I believe it is contemplated we will have—I see no reason for distrusting their wisdom or to conclude that they will not represent the interests of the people. Because if there is an apprehension that the country is to be eaten up with lawyers, why, I would say as some one else suggested that you cannot do without them, they will be there in spite of you, yet you may send other men here—keep them all out—and they will be enabled, coming right from the people, to know the practical workings and operations of these things; and wherever it is oppressive they will correct that thing through the regular rigmarole of constitutional amendment which has to be voted on by the people. I therefore trust that it may be the pleasure of the Convention to leave this matter as the section read by the gentleman from Monongalia as incorporated in the report of the judiciary committee, that the jurisdiction of justices shall be such as shall be prescribed by law.

MR. BROWN of Preston. I do not desire that gentlemen of the Convention shall be alarmed. I do not intend to make a speech; but I am a little in the fog this morning. I knew pretty clearly what was before the Convention, but the clouds have been gathering since; and I rise to ask the Chair to state the precise question before the house.

The Secretary reported: Mr. Dering moved to strike out "fifty" and insert "one hundred;" Mr. Stuart of Doddridge moved to strike out the whole 7th section; the Chair ruled that the latter motion was in the nature of a substitute. The question is on the substitute offered by Mr. Stuart.

MR. STUART of Doddridge. We had better have a division of the question—first on striking out. I expect the house desires such a vote. I know some members do. I ask to divide the question.

The vote was taken on striking out the section and the motion was rejected by the following vote:

YEAS—Messrs. John Hall (President), Brown of Preston, Dille, Hall of Marion, Harrison, Hervey, Irvine, McCutchen, Parker, Stuart of Doddridge, Smith, Taylor, Willey—13.

NAYS—Messrs. Brumfield, Battelle, Chapman, Cook, Dering, Hansley, Haymond, Hoback, Hagar, Montague, O'Brien, Parsons, Powell, Pomeroy, Robinson, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Trainer, Van Winkle, Walker, Warder, Wilson—26.

The question recurred on the motion of Mr. Dering, to increase the amount of a justice's jurisdiction from fifty dollars to one hundred, and the motion was agreed to.

The question recurred on the first sentence of the section as amended.

MR. WILLEY. Mr. President, as I understand that clause, sir, its proper grammatical interpretation is that it gives unlimited jurisdiction to justices of the peace. There is this extraordinary fact connected with it, that while it gives justices of the peace a jurisdiction to any amount—a hundred thousand dollars—it does not allow an appeal from his judgment where the amount is over one hundred dollars. It gives him jurisdiction to any amount, where the value may be a hundred thousand dollars and yet does not allow an appeal from his judgment where the amount in value is over one hundred dollars. It reads: "The civil jurisdiction of a justice of the peace shall embrace all actions of assumpsit, debt, detinue, and trover, where the defendants reside, or being a new resident of the State, is found, within his township, or where the cause of action arose therein, when the value in controversy, exclusive of interest, does not exceed one hundred dollars, subject to

an appeal to the circuit court of the county, &c." It gives him all jurisdiction. It abolishes courts. There is no use for a court. The argument of the gentleman from Marion just now is a conclusive one, that where you give positive jurisdiction to one tribunal in the Constitution, with a clause giving authority to the legislature to fix the jurisdiction of another, prescribed by law, it cannot come within the limits of the jurisdiction absolutely prescribed in the Constitution to another tribunal. Then, sir, you give to justices of the peace all jurisdiction of assumpsit, debt, detinue and trover with no rightful appeal where the amount is over a hundred dollars.

MR. VAN WINKLE. The defect here is a very slight one. The language is liable to that interpretation. It only wants the word "but" previous to the word "subject." That would remove any such inference, I suppose. "Subject, however,"—that would be better still. It is very likely the word has been in. I will move to insert the word "however" after "subject," in the 93rd line.

MR. WILLEY. It seems to me if you would strike out the word "and" in the 92nd line, it might do it. "The civil jurisdiction of a justice of the peace shall embrace all actions of assumpsit, debt, detinue and trover, where the defendant resides, or, being a new resident of the State, is found, within his township, or where the cause of action arose therein"—now there is a statement. Then you have a copulative conjunction, going on and making another proposition: "and when the controversy, exclusive of interest, does not exceed one hundred dollars, subject to an appeal to the circuit court of the county." It says "when the value" (in all these actions, of course,) does not exceed $100, you can appeal; but if it is $1000 you have no right of appeal at all.

MR. VAN WINKLE. It says "when" in one case, "where" in the others. I am satisfied one might have been mistaken for the other by the printer. But I am satisfied I wrote "when." This can be changed, too, by the Committee on Revision. I would ask, then, to strike out "all" before "actions" in the 89th line and insert "however" after "subject" in the 93rd line. But if it leaves it in doubt, I would prefer the doubt should be removed.

MR. WILLEY. The main objection I urged is that if this section stands as it is, the legislature cannot in actions of assumpsit, debt, detinue and trover, confer any jurisdiction on the circuit courts at all. For this shows the justice's jurisdictions shall embrace "all actions." Having given jurisdiction in express terms

to one tribunal, the question is whether the legislature has any authority to give jurisdiction to another power.

MR. VAN WINKLE. There can be no doubt if we put it in the Constitution, because one part of the Constitution is as strong as another. But it would further remove the objection to say "extend to" instead of "embrace all."

MR. HERVEY. I move to strike out "detinue and trover," in the 89th and 90th lines.

MR. SOPER. I offer an amendment, sir, that will embrace the gentleman's, if it is in order to put it in.

The Secretary read:

"The jurisdiction and duties of a justice of the peace in civil actions, and especially cases wherein the amount claimed does not exceed one hundred dollars, shall be regulated by law, to be exercised within the township in which the justice resides and the defendant is found or the cause of action arose."

THE PRESIDENT. The Chair would remark that the proposition of the member from Tyler, from its very nature, would not be an amendment to the motion made by the member from Brooke. The question will first be on the latter.

Mr. Hervey's motion was rejected.

MR. SOPER. I would like to offer that amendment because I want to have this matter as satisfactory as we can to all the gentlemen, and by the adoption of this amendment we will retain the details.

MR. VAN WINKLE. Is that to be an addition to the section? It sounds like a substitute for the whole of it.

MR. SOPER. It is only for the first three or four lines.

MR. VAN WINKLE. The house have refused to strike out.

THE PRESIDING OFFICER (Hall of Marion). A motion would be in order to strike out a part of the section.

MR. SOPER. Strike out to the word "dollars" in the 93rd line and insert my amendment. If this amendment is adopted it will save the necessity of moving to add the action of "trespass," and leave the whole matter probably for the determination of the legislature. I am anxious to retain the principle contained in the re-

port specially and how this jurisdiction is to be exercised. I have added there, you perceive, "in special cases." I mean by that to be understood to be given jurisdiction in cases of landlord and tenant, to issue a landlord's warrant for the collection of rent. I believe under the Code of Virginia it is necessary that a justice of the peace issue a warrant. I hope the legislature will so amend the law as to give jurisdiction to justices of the peace to remove the tenant when there is no question about expiration of his term. There are cases of bastardy which might be disposed of by a single justice. There is another class of cases which I will denominate as supplementary to execution, allowing the courts to have a suggestion to reach money of the creditors to stay the debt. These are some of the causes, I suppose, brought before the legislature where it would be safe in all matters before justices of the peace to give them jurisdiction in relation to it.

The amendment was submitted to vote and was rejected.

MR. WILLEY. Mr. President, I propose to amend the sentence by inserting after the word "county," in the 94th line the following:

"But in every case where the sum or thing in controversy exceeds the amount or value of twenty dollars, the justice shall, upon the application of the defendant, at any time before trial, remove the cause to the circuit court of the county wherein the same shall be brought, and the clerk of the said court shall docket the same, and it shall be proceeded in as if it were an original motion, made in said court."

MR. VAN WINKLE. I move to amend the motion by inserting instead simply the words: "where the value in controversy exceeds twenty dollars"—to use those words instead of that long rigmarole, so there will be no appeal below twenty dollars.

MR. IRVINE. I do not think the gentleman understood.

MR. WILLEY. The object of my amendment is that if a party is brought before a justice of the peace to give him the privilege of going to the court if he wants to in all cases over twenty dollars.

MR. DERING. It seems to me, sir, that if you pass that amendment you negative the very clause of the section we have just passed to give the defendant the right to take his case out of the magistrate's hands and put it into court and thus keep the plaintiff out of his money for a long time. I am sorry that I cannot go for the amendment of my colleague because I think it negatives the very clause we have just passed.

MR. SOPER. That amendment unqualified will destroy the whole beneficial object of this section. If the Convention should adopt it, there has been an amendment moved to it, but I shall move to add: "in case the defendant shall file an affidavit and the justice of the peace shall believe there is a substantial defense against the claim."

MR. WILLEY. We see at every step the difficulties I anticipated. You cannot investigate this matter one inch that you will not see the propriety of fixing the unbending constitutional rules that shall bind down parties before the justices of the peace in the country. Sir, there are two parties to every suit. We stand here not to look to the rights of the plaintiff alone. Defendants have rights, debtors as well as creditors; and it is more essentially the object and duty of this body to protect the debtor as the weaker party in his rights than to give power to crush him by these summary processes of justice without plea or law in the country to an unlimited extent of jurisdiction. We are building up an unbending tribunal to oppress the people, sir, that will be prejudicial to the community. We will not progress in our amendments without seeing at every step the error of enumerating by constitutional provision the safeguards that ought to be thrown around the administration of justice to the citizens of this commonwealth. Well, then difficulties meet us at every turn. I wish members of the Convention to remember that debtors have rights as well as creditors; that the heel of the creditor is not to be put on the neck of the debtor in this country without the ordinary processes of law or adjudicature; that we are to protect his right. Sir, the man who has leisure may read it over and judge of the proportion of this community—poor men—who will be without redress. I say we ought to look at both sides of this question. And let me tell you, gentlemen, who have appealed here to what is the popular will that if this section be adopted it will not be long until popular curse will rest on the acts of this body by an overwhelming majority all over this community. It is the duty of this body to protect the rights of the weaker party, and we are more essentially bound to ordain constitutional provisions for the debtor classes than to arbitrarily institute summary measures for the collection of debts in the hands of the creditor. Justices may be too speedy sometimes; may have men to execute their judgments too promptly; and, sir, if we give this arbitrary power to justices in the matter of this question of jurisdiction to sit on matters of unliquidated damages

to decide on questions involving the character and interests of the citizen, we must go into every detail and we must be very careful in inserting the provision and have provisions in this Constitution that will protect the debtor class, the poorer class of the community that are not so well able to defend themselves. We have now adopted the principle, and as long as I stay here I shall take this Code and not be satisfied until every provision that I believe to be necessary to protect the debtor and every prevention to arbitrary decision. I think the defendant ought to have the right to carry his cause to the court if he is willing to incur the expense. That is all I ask, not by way of delay but by motions as other motions are made, or ten days' notice. I do not believe in giving the power all into the hands of the creditor to select alone the tribunal in the country in secret, but where legal gentlemen will scrutinize the acts of the justices, a man not learned in the law. I do not believe in giving creditors the right to drag poor men before the community; I do not believe in giving the poor wholly into the hands of iron-heeled creditors to crush a vast majority of this community by these summary proceedings. Sir, the law's delay is the liberty of the citizen; and after all, as much as you may cry out at the delays of the law, it after all is the safeguard of the citizen. Whereever you have a summary justice you have despotism and tyranny. You may call it by one name or another, it is the same in fact. I hope to have this language incorporated in the Constitution, that with the principles we will also incorporate all the safeguards that the experience of legal gentlemen may indicate is necessary to protect the rights of the citizen.

MR. DERING. I must still persist in opposing the amendment of my colleague. I am as favorable to protecting the poor man as any gentleman on this floor; but I am for protecting the great ends of justice, and that shall be my polar-star here and everywhere else. I, sir, am representing my people, and without any reference to the people in any demagoguical spirit. I say it is my duty as their representative to carry out their views in reference to this and every other question presented here for consideration. And I tell this Convention now that I solemnly believe that this amendment will cut off and negative the section they have just passed after this long contest. Sir, to place in the hands of the defendant the summary power, the arbitrary power, of taking this case out of the justice's hands and putting it in the court in the hands of the lawyer, there to be held till the lawyer can stay the proceedings

against him. Sir, our duty is equally to plaintiffs and defendants. It is but just that an honest man should pay his debts, and we should have laws to make him do it. The more speedily you can make a man do justice, the less injustice is done to the plaintiff. I admit the defendant has his rights, and he can go before the magistrate and there make his defense, and if the judgment goes against him it is but in accordance with the eternal principles of justice that it be made up in a speedy and summary manner. Sir, it is but justice that a man should live up to his contract. It is but right, and no gentleman will dare say for a moment that the ends of justice will not be promoted by making a man live up to the very letter of his contract.

MR. WILLEY. I hope my colleague did not understand me to say anything to the contrary.

MR. DERING. No, but you go for delay, and that defers it to a considerable length of time after you place the matter in hands of the courts. I tell you, gentlemen, who have voted for the former section, that this amendment will negative the whole of it, take it out of the hands of the plaintiff and place it in the hands of the defendant, who will arbitrarily remove it to the courts of law. I trust this Convention will stand firm and sustain the section they have passed by a conclusive vote.

MR. STUART of Doddridge. I wonder if it is recollected by this body that a vast majority of the claims litigated will never come before any of the courts, will come before the justices of the peace and will embrace perhaps the value of property that is owned by the greater portion of the community. Now, sir, you are dealing with a majority of the citizens of the country because the great majority of the cases that will come up, that will affect the interests of our citizens, will be for claims not exceeding one hundred dollars; and to say that a man shall bring suit before a justice of the peace, let him be qualified or otherwise, and enforce his opinion, bar him arbitrarily against the defendant, would be such an absurdity as I think would prevent our people adopting the Constitution on that account, as much as we want a new State. I presume every man here has read the Bill of Rights of Virginia, the great author of which, Jefferson, is cited by the gentleman from Wood as authority for his report here. We read in the bill of rights that in all controversies respecting property either part has a right to trial by a jury of twelve men, as preferable to any other. Well, now, gentle-

men, we are growing so wise that we are going to trifle with this great constitutional right of man. Are you going to make provisions here that these justices of the peace shall summon jurymen in all these cases in the country? Is not the purpose of this body now the saving of cost to the citizens of our country? Before a justice of the peace, who knows no law, and say it shall have a trial here by a jury of twelve men? And if you say it shall not be done, then you violate this great principle laid down by your revolutionary sires, men who were equally as wise as we are, although we are a very intelligent body, indeed. The poor men whose cases would involve less than a hundred dollars would embrace the majority of your people. To say that they shall be brought arbitrarily before a single justice, and shall have no remedy except by appeal—which is no remedy at all—for the poor man could not give the security—then, sir, if you say a majority of your people shall have no remedy, and rights at all before these justices of the peace if the plaintiff chooses to bring his action there? Is that the motive and object of my friend from Monongalia?

MR. DERING. I will go his security.

MR. STUART of Doddridge. Let us have it endorsed here, then that the member from Monongalia will always go the security of these men who will be sued for a hundred dollars.

MR. DERING. If they are sued wrongfully.

MR. STUART of Doddridge. Yes; but who is to judge of that? My experience has always been that as much as possible we always sought to avoid litigated cases of this kind although the controversy might be under a hundred dollars and in many cases embraced everything a man was worth. We did not want even to go before the county courts because we did not like to stake everything our client was worth before such a tribunal. A hundred dollars to a man who has no more than that is as much as ten thousand to a man who is worth a hundred thousand. A man who is worth a hundred thousand may sue a poor man before the justice and give him no other remedy and that justice of the peace may render judgment against him contrary to all law and every principle of law, and yet he has no remedy. This is the kind of a Constitution we are going to rest our action on. If so, I think I know what will be the voice of the people. The proposition of the gentleman from Monongalia meets my object exactly. I have no objection to these

details if you just say that the party shall have the right to move his case to the circuit court.

MR. DERING. When he gives the security he will have the right.

MR. STUART of Doddridge. When he gives the security. The gentleman from Preston has just called my attention to the principle here embraced even in the Constitution of the United States. I thought I had given you Virginia authority that is endorsed—whom the gentleman from Wood gives as his authority for his township principles. Well, here is the Constitution of the United States. Why was this adopted by the framers of the Constitution of the United States? Had they no object in view? Had they no experience in these matters? "Where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury shall be re-examined by any court, &c."

MR. VAN WINKLE. I read that very clause from the constitution yesterday. I gave notice then that I had drawn up a provision providing for a jury to aid these magistrates in decisions. I did not then state the reason but I will now. It refers both to civil and criminal proceedings but will come in after we have passed both those things. I stated then that that clause of the United States Constitution is not generally held to apply to the states but only to the courts of the United States.

MR. STUART of Doddridge. How do I know that this body is going to adopt the provisions that will be offered by the gentleman from Wood? I must take the thing as I find it. Now, whether this Convention be disposed to take the provision the gentleman intends to propose is a question I am not now prepared to determine. But that appears to be a thing I think that this Convention should know before they adopt this provision. You may not want to adopt it, that these juries be called before the justices of the peace. And there would be the additional expense of summoning these jurors. There would be the additional cost, which in nine cases out of ten would have to go up and finally be settled. At the same time it is a cumbrous machine and one that will cause me to vote against this township principle if it must be adopted. Then I will oppose it with all my power, and I think my people will do the same thing.

MR. SOPER. The gentlemen in behalf of this motion have manifested a good deal of warmth under a profession as though we were

attempting here to oppress the poor. I try to look on both sides of this question, and certainly my sympathies are with the poor, and they never will be oppressed by any act that I shall do. This amendment is taken from the Code of Virginia. It was incorporated in that Code after it had confined the jurisdiction of justices to twenty dollars. They then extended it to thirty and incorporated this provision in the Code. Gentlemen remarked this forenoon about public men here in Virginia extending this jurisdiction beyond thirty dollars, to eighty, now up to a hundred. It shows the people have confidence in these justices' courts. And why should we retain in our present report a provision or insert in the present report a provision such as rejected in the State of Virginia as giving to justices' courts an increase of ten dollars in jurisdiction? There might have been some propriety in it then; but subsequently the people have shown that there was no necessity for it. It is this, that on return of a summons a party may go to court for no other purpose in the world than to gratify feeling and annoy the plaintiff, and request the justice to certify it and send it up to the county court where the plaintiff's costs is increased a considerable amount. Now, that I am opposed to, because we have given here definite power of appeal. Does that take away any right? Certainly not. But it is said he cannot appeal until his case is decided. He ought not to appeal before. Both parties are then better prepared to try the case, because they have had a hearing, know what the facts are in the case and if there is nothing more than a desire to get justice you will find in nineteen cases in twenty the decisions of our justices would be satisfactory. I think my friend from Doddridge is entirely mistaken when he proposes that every cause tried in a magistrate's court shall go up to court on appeal. No, sir; after both parties have had their claims before him, in nearly all cases there will be perfect satisfaction.

But the poor man! Now, let us look and see how we are going to take care of the poor man. You have now—and I was going to compliment the Legislature of Virginia on the spirit of improvement that has been manifested here for a few years. When I first came into this state scarcely anything was exempt from execution. There have been additional exemptions from time to time. I saw two members of the legislature looking over it and they estimated the value of the property now exempt at three hundred dollars.

THE PRESIDING OFFICER. The argument must be on the proposition before the Convention, not with reference to the proposition giving concurrent jurisdiction.

MR. SOPER. I am arguing it. The objection to it is, we are taking away the rights of the poor man if we do not adopt it. I am going to show that there is no disposition to do that, and I have shown the Legislature of Virginia are improving in looking out for the interests of the people; that they have within a few years increased exemptions and have now on the statute-book an exemption of property of three hundred dollars; so when any man who has not that amount of property can always get the requisite amount of security to bring an appeal. But further, sir, this very legislature have now got a bill before them exempting not only three hundred dollars worth of personal property but five hundred dollars worth of real-estate. This shows that there is something at work in the public mind to look out and take care of all parties, particularly the poor. How would I take care of the poor? It is an answer to the remark of the gentleman from Monongalia who said here was an attempt to oppress the poor. I would give power to the magistrate whenever he renders judgment against a poor man, if he has no more property than is exempt by law I would give him an opportunity of staying execution by paying a dollar and fifty cents a month. He should have authority to pay his debt by installments not exceeding that. I would go further. If I had to give judgment against him I would protect him from the issuing of an execution for thirty, sixty or ninety days—six months if it became necessary. If by giving my judgment and having property docketed and having a lien on his property, then I could afford to give him time.

THE PRESIDING OFFICER. It does occur to me on a motion to amend by inserting what would amount to concurrent jurisdiction and a motion to amend that by inserting a qualification limiting the appeal, that it is not in order to enter into a long detailed account of how you may avoid a seeming evil.

MR. SOPER. I am answering the argument that they were wanting to protect the poor man.

THE PRESIDING OFFICER. If it was a reply to the details of the the gentleman from Monongalia, it would be in order. I understood the gentleman from Monongalia to refer to no hardships but what

grow out of the direct act. It would not be in order beside that, by traveling around into other matters to show how you may avoid the hardships that grow out of the direct act by a proposition that is not before the body.

MR. DERING. I appeal from the decision of the Chair.

MR. POMEROY. I hope my friend will not do that. I move the gentleman proceed by general consent.

MR. SINSEL. If the gentleman has a right to go on, he ought to be allowed to go on without such a motion as that. This voting him leave is an admission on the part of the Convention that the gentleman is wrong. Now if he has a right to go on, he ought to go on.

MR. DERING. I withdraw the appeal.

MR. POMEROY. I have no doubt at all of his right to go on, but I do not like this thing of appeals.

The motion was put and leave given Mr. Soper to proceed.

MR. SOPER. I was going on to say that there would be no proceeding before the magistrate but what would be so guarded that any poor man would be protected much more than under the law now. I briefly stated, sir, that he would probably make the affidavit as to the three hundred dollars worth of property. If so and a judgment was obtained against him he could easily appeal if he was dissatisfied with it and he could get the necessary security. If he did not see fit to get an appeal on a judgment before a magistrate an execution would not issue against him and under certain circumstances I would give him the right of paying that judgment by installments to save him cost and expense upon an execution. At all events on a judgment depending on its amount, I would give him thirty days to six months before an execution could issue in cases where I had obtained the security which a judgment and the aid of the legislature would give him on his property effects. Now, that is my answer in relation to the poor man. There is no difficulty in taking care of the interests of the poor; but the great difficulty is in taking care of the rights of the plaintiff. You have got a claim against a man here for one hundred dollars, and he is in failing circumstances. He wants to get reference or something of that kind, and you want security which he declines to give. In this short and speedy mode you can get your

judgment and make it a lien on his property and then you are secure. Hence you will find without doing any injury to the poor man you are protecting the man who has got the claim. After you have got your judgment and lien, the interests of the poor man may be taken care of. But I do protest against this amendment now, because it gives—I do not care whether poor or rich—it gives a dishonest man the power of putting and keeping off the man he owes without a single cent of security and driving him where he must of necessity expend a number of dollars giving security. I would not give that poor man the right just to direct the magistrate without a single excuse to send it up to the court. I would not countenance the man who is so poor that he derives no advantage from it except to drive his creditor to expense. I hope that amendment will not prevail.

MR. WILLEY. I have forborne to notice the argument repeated time and again, of delay, because I suppose that this intelligent body could see and would see that there was just as much to be said on one side of that question as on the other. Let the rogue get his honest neighbor before the justice in the country, and how long will he delay him—how long will he manage a justice in the country, especially if he be an adroit man of some influence? Just as long as he pleases; and then if he is beaten he will take an appeal and bring it into court and have a second edition of the same delay in court. Why, sir, it is easier to delay a case before a justice than before a court. This thing is now to go before the county courts that we have been worried by so much and so long. But the matter is to go before the circuit courts—before men learned in the law, men who it must be supposed will have their own interest aside from the obligations of the oath they have taken and the position they have assumed, always desire to expedite justice as greatly as possible. I do not intend to go into the argument beyond this; but so far as the delay is concerned it is but making two sets of applications for witnesses, two processes of delays, one before the justice in the country until the justice is worried into granting delay and overrules the last application and gives his judgment and appeal is taken by this wily designing man, and the matter is brought to court and then he delays it as long as he can thereafter. Instead of expediting business, so far as that class of men is concerned, it will not do it at all. Because men who simply wish to delay without any just grounds for it can certainly accomplish their purposes in the country before the justice

better than they can in court. Inevitably so, sir. The hardship falls on those honest men who do not want to litigate.

MR. POMEROY. I have taken no part in this discussion and do not rise now to enter into the argument, but I think we ought to bear this in mind. The motion has been discussed at great length as the motion was a short time ago and was voted down by a large majority. I do not think gentlemen ought to bring up the same kind of motion again. I would infinitely prefer the motion of the gentleman from Doddridge to that of the gentleman from Monongalia. There is no delay before a competent and wise justice. If there is delay, who will pretend to say it is taken with the same expense as in the county or circuit court? I cannot conceive why gentlemen are disposed to spend so much time on this 7th section. This system of bringing cases before justices of the peace has been found to work well in all the adjoining states with which we are surrounded. The question is never mooted in Pennsylvania. I think it is venturing nothing to say that there nineteen cases are tried before the justices to one in court. The justice in a large and populous township in that state has as much business as he can attend to. So that in regard to the argument about the amount of cases tried why it is decidedly in favor of the justice of the peace. They are elected by the people there with reference to this fact that they are to try important cases; and the case is as a general thing settled there. A gentleman on this floor here today tells me that he has rendered judgment in at least a thousand cases, and that in that number there has never been a solitary case of appeal. Not one case in a thousand before one magistrate. Well, now, if that is good in the case of one magistrate, may it not hold in the case of many others? There may be incompetent men elected as circuit judges. They are not prepared to try a case right; or there may be very incompetent men who are jurymen before a circuit court, as incompetent as one before a justice. So I think the argument in one case is as good as in another. The jury must be composed of men of a certain kind of qualified citizens. Why would not the justice in the selection of a jury get as good a jury as the man on the bench? Under your old county court system well qualified men had little inducement to be justices, but under this new system the people will see to it, if the men do not seek it themselves that the best men are selected. These justices will become very important under this new system and therefore the people will select their best men.

If this Convention did right a few minutes ago in voting down the motion of the gentleman from Doddridge they certainly ought to vote down the amendment that is now offered. Some have never seen this system tried. But there are a number here who have lived in states where it has been tried and can testify to the fact that there is no more litigation than where it has not been adopted.

Adopt the amendment of the gentleman from Monongalia and you completely destroy this section. I have been anxious to have this section settled; and therefore it would not be consistent for me to occupy time in speaking.

The Secretary reported the amendments before the Convention.

MR. HERVEY. It has been said that the Convention is now called upon to decide precisely the same question it has decided heretofore. Now, Mr. President, I deny that emphatically. The one was a question of jurisdiction. How high shall the jurisdiction of justices of the peace go? This is a question of the right of appeal from the judgment of a justice. The gentleman from Hancock told us of a justice who had tried a thousand cases without an appeal. Does that prove anything? Has not the party the right to appeal? The proposition now before us is to deny that right.

MR. DERING. It is reducing the jurisdiction of the magistrate to twenty dollars.

MR. HERVEY. The amendment of the gentleman from Monongalia says the defendant shall have the right to carry it or not on appeal. If he has a case he prefers shall be tried before the circuit court, this gives him the right to carry it there. It requires the consent of the aggrieved party.

But the proposition of the gentleman from Monongalia and the argument of the gentleman from Brooke amounts to this, that you tie the hands of both parties; you put the party defendant in the power of the party plaintiff, and drag him *nolens volens* before a justice and he has got no right of appeal. I have been a justice of the peace myself, but I say, sir, that the act of this Convention if carried through invests despotic power in the person of the magistrate, from which the party defendant cannot relieve himself. He is at the mercy of the party plaintiff and you give him no right of appeal. I care nothing about the jurisdiction, but give each party equal rights. Is it not known to every man that there are

neighbor quarrels and bickerings and that the sharper knows that fact? Drag the party defendent before him and get judgment, and where is his remedy? The gentleman proposes a homestead bill to exempt him; to say that he shall not collect his debts. Very well. Wait till that homestead bill comes up and then we will deal with it. I repeat I care not to what extent the jurisdiction goes; but give the party defendant equal rights, not confer all the rights and powers on the party plaintiff.

MR. POMEROY. I never desire to be misunderstood. If I did convey to any man's mind the idea that the proposition of the gentleman from Monongalia was the same proposition as that of the gentleman from Doddridge, it was in this sense, that both propositions were intended—or whether intended or not the effect of both, was to destroy the first part of this section of this report. The gentleman from Doddridge moved to strike out. That motion fails. What I did say was that in my humble opinion this manner of destroying the section was, unfortunately, worse than the other. It does virtually destroy it. I distrust it from ever being of any practical benefit to any man, woman or child in the universe and therefore it was the worse way of destroying it than the other way. I hope I make myself distinctly understood, that the plan of my friend from Doddridge was not as savage a way of destroying it as the method of the gentleman from Monongalia; that in either case the section was destroyed; and while I would have preferred the plan of the gentleman from Doddridge I had no particular preference. The fact that appeals are not carried up from the justices docket is not on account of a paltry sum of dollars and cents but because the decision of the justice has been correct and that it ought not to be reversed before a higher tribunal. The man fails because he was in the wrong and the justice was not swerved from the path of rectitude by any special pleading before him, but having both the parties before him he holds the balance of justice with a steady and equal hand and metes it out to the man that deserves it. Why not let a man take his claim before his own fellow man in his own township? Why not let that man decide the case? It was not the extension of the jurisdiction at all that we decided in voting on the motion of the gentleman from Doddridge. The vote we gave there was on striking out. A man might differ in regard to extending their jurisdiction to a hundred dollars. Why should we hand over everything to this coming legislature? There may be some wise men in that body—and may not. Why hand over the

proper business of this Convention that ought to go before the people? When they vote, they ought to know what they are voting for. I know the people of my county are in favor of extending the jurisdiction of justices of the peace. I know what they want put into this Constitution about justices of the peace. They say every state around us has this township system and we know it is a good system. They have no such tax as we have and they demand relief. We want these justices to be the most honorable and best men in the community, and if you vote down this amendment there will be no cry coming out demanding a change in this Constitution.

Another thing you will find: your circuit court will have very little more business than it had before. The circuit in our county met in the forenoon and adjourned in the afternoon. I judge it will be so hereafter. Merchants sometimes place an account in the hands of the justice of the peace for collection, and if he is a good man he tells them the accounts are there and he would like him to come in and pay without cost. What difference is it to me whether I pay to Mr. A. or to Mr. B? If a man has the right principles as justice of the peace, when an appeal is liquidated in that way he would spurn the idea of receiving a copper of compensation. And hence I believe this a good system. I want it understood that while the propositions of the gentleman from Monongalia and from Doddridge are not identically the same that they both virtually and effectually and completely and for all practical purposes now and forever kill the section in this report of the committee, and I would, if it has to be killed, have preferred to kill it in the way proposed by the gentleman from Doddridge.

MR. HERVEY. I will give five, ten or twenty minutes to the gentleman from Hancock if he will elucidate that proposition. I maintain they are separate and distinct propositions. Most undoubtedly. One is a question of jurisdiction; the other of appeal.

MR. HARRISON. Mr. President, I move this Convention now adjourn.

The motion was agreed to and the Convention adjourned.

XXXV. WEDNESDAY, JANUARY 22, 1862.

The Convention met at the appointed hour and was opened with prayer by Reverend Alfred Paull, of the Presbyterian church.

Journal read and approved.

MR. VAN WINKLE. At the suggestion of my friends here, sir, I will ask leave to withdraw my amendment which I intended seriously as a substitute. I withdraw it now, sir. It will go on the record of today. This friend suggests that it tends to complicate the subject. They perhaps want to amend my amendment, and perhaps it will save time to let the house come to a direct vote on the proposition of the gentleman from Monongalia.

MR. BROWN of Preston. Mr. President, I offer the following resolution:

"Resolved that when this Convention adjourn, it adjourn to meet hereafter at nine o'clock in the morning until otherwise ordered."

On that resolution, sir, I demand the yeas and nays.

The vote was taken on the resolution and resulted

YEAS—Messrs. Brown of Preston, Brown of Kanawha, Brooks, Brumfield, Battelle, Cook, Dering, Dille, Hansley, Hall of Marion, Haymond, Harrison, Hervey, Hoback, Hagar, Irvine, Montague, Mahon, McCutchen, Parsons, Powell, Parker, Paxton, Pomeroy, Robinson, Sinsel, Simmons, Stevenson of Wood, Stephenson of Clay, Stewart of Wirt, Sheets, Taylor, Trainer, Walker, Warder, Wilson—36.

NAYS—Messrs. John Hall (President), Stuart of Doddridge, Soper, Van Winkle—4.

MR. STEVENSON of Wood. I wish to offer a resolution in reference to fixing the time of adjournment. I am willing to submit it without discussion:

"Resolved, That hereafter, until otherwise ordered, this Convention will adjourn at a quarter before six o'clock P. M."

MR. STUART of Doddridge. It seems to me unnecessary to adopt that resolution. It might be we would desire to extend our

sessions a little later. I see no necessity for it. I would prefer if our business was such that we desired to remain we could have that privilege. I want to progress with business, although I voted against meeting at nine. It is simply because we effect no more business by it; and I think we are doing considerable business sometimes, sir, after a quarter of six perhaps.

MR. STEVENSON of Wood. The difficulty suggested by my friend from Doddridge would be very easily obviated if there is any matter of importance that requires extension of time. The Convention can extend it if there is no objection. This is simply to fix a time so that we will not be kept here sometimes to five o'clock, sometimes to seven. If we fix an hour the members will adjust their speeches and business to that hour. If they wish to extend it beyond that, the Convention of course would do it.

MR. HALL of Marion. I think it will give us less trouble to make a motion to adjourn, and it may be, as suggested by the member from Doddridge that we might want to stay to nine o'clock or ten o'clock.

The resolution was rejected.

THE PRESIDENT. When the Convention adjourned, it had under consideration the amendment of the gentleman from Monongalia. The amendment of the gentleman from Wood is withdrawn. The question is on the adoption of the amendment offered by the gentleman from Monongalia, which is: to insert after the word "county" in the 94th line the following:

"But in every case where the sum or thing in controversy exceeds the amount or value of twenty dollars, the justice shall, upon the application of the defendant, at any time before trial, remove the cause to the circuit court of the county wherein the same shall be brought, and the clerk of the said court shall docket the same, and it shall be proceeded in as if it were an original motion, made in said court."

MR. IRVINE. I ask for the yeas and nays on that question.

MR. BROWN of Kanawha. I understand in my absence the Convention have adopted a proposition extending the jurisdiction of justices to a hundred dollars. With the restriction proposed in this amendment I see no objection to that extension. It alleviates the case of the difficulties that occurred to me and that I have witnessed and experienced. I am very happy to see the amendment

has been carefully drawn; and as I apprehend from looking, without reference to the whole state, as it has stood on the books of Virginia many years, that this amendment fits the case. I hope the Convention will see not only its duty but its pleasure to sustain this proposition of the gentleman from Monongalia in the language of the law as it now stands on the statute-book with the only change in it that has been voted by the Convention, of increasing the jurisdiction to one hundred dollars. If so, our rights are secure and you have diminished by one-half the expense of litigation. You have relieved the debtor class from evils and inconvenience and expense in the direction they would be subject to, inevitably if you do not adopt it.

The vote was taken by yeas and nays and Mr. Willey's amendment rejected by the following vote.

YEAS—Messrs. Brown of Preston, Brown of Kanawha, Brooks, Dille, Hall of Marion, Harrison, Hervey, Irvine, McCutchen, Robinson, Ruffner, Stephenson of Clay, Stuart of Doddridge, Taylor, Trainer, Willey, Walker, Wilson—18.

NAYS—Messrs. Brumfield, Battelle, Chapman, Cook, Dering, Hansley, Haymond, Hoback, Hagar, Montague, Mahon, O'Brien, Parsons, Powell, Parker, Pomeroy, Sinsel, Simmons, Stevenson of Wood, Stewart of Wirt, Sheets, Soper, Van Winkle, Warder—24.

MR. VAN WINKLE. Before offering the amendment I proposed in reference to appeals, I have had some consultation with the gentleman from Monongalia; and there are some points here in which he thinks and perhaps others think the report is wrong, is not specific enough in order to bring out the meaning the committee intended to attach to it; and for that purpose I will ask general consent to introduce in the 91st line, after the word "found" the words "or his effects." That is perhaps the substance of the amendment; but it is to give jurisdiction in case of attachment where a party may not himself appear but may have goods by which he may be summoned. I apprehend there will be no objection to the addition of that.

There being no objection the words were inserted.

MR. VAN WINKLE. In the 100th line, "or in which the property to be levied on is found," to make that more specific I propose to introduce "of the township," so it will read: "or of the township

in which, etc." It is thought a little obscure. I trust there will be no objection.

MR. WILLEY. Suggested it read "or of any township in the State in which, etc."

There being no objection, this language was inserted.

MR. VAN WINKLE. The committee were of opinion that this left all other matters not specifically provided here to the action of the legislature. The gentleman from Monongalia thinks it does not. I will therefore propose to add at the end of the section, in order to make that clear:

"The manner of prosecuting the aforesaid actions, and of issuing summonses and executions, and of executing and making return of the same, shall be prescribed by law; and the legislature may give to justices of the peace and constables, such additional civil jurisdiction and powers within their respective townships as may be deemed expedient."

I think that suits the views of both parties.

MR. BROWN of Kanawha. I will move to strike out all after the word "ship" in the 98th line. It does seem to me that unless the Convention intends to make all the law that is ever to be made in the State this ought to be done. Now, that we should go on here regulating executions is a thing I will venture to say, without having examined these constitutions cannot be found in a constitition in the world.

MR. VAN WINKLE. Will the gentleman before he offers any new amendment let us settle this matter.

MR. BROWN of Kanawha. I was trying to settle it. My idea was to strike out all after "township," which begins the executions. Why the legislature must regulate the executions of these courts and why not of magistrate's courts? All executions. A general law regulates the executions, no matter what courts they issue from. We should not put in the Constitution the regulation of executions from justices. Having given jurisdiction to the justices, it is to be presumed, I suppose.

MR. VAN WINKLE. As we do. Will the gentleman not listen to the amendment I have just offered:

"The manner of prosecuting the aforesaid actions, and of issuing summonses and executions, and of executing and making return

of the same, shall be prescribed by law; and the legislature may give to justices of the peace and constables, such additional civil jurisdiction and powers within their respective townships as may be deemed expedient."

Now whether with that general clause added, the clause commencing "Executions issued by a justice" is necessary or not the Convention may decide. If it is supposed to be superfluous, if the Convention will permit this new sentence to come in at the end, then it will be competent for any member to move to strike out any intermediate part of the section which might be rendered superfluous by it.

MR. BROWN of Kanawha. I must still insist on the amendment.

MR. VAN WINKLE. I will propose, sir, to add this at the end of the section if that is voted in. Then the gentleman's motion will be perfectly in order and the Convention will have the two matters before them. I was willing to accept this addition as a sort of compromise of conflicting opinions that had been manifested here. The conclusion of the committee was that the legislature should regulate all these matters. The object of introducing it here was to confine it to the township. I do not know but if the words "may give justices of the peace and constables such additional jurisdiction and power" were put in whether it would not be well to strike out the other. I would, however, not venture to do that or accept that in the final which I am copying; but if we can take a vote on the addition and then the gentleman make his motion to strike out, I think we may meet the views of the Convention, the friends of the section as reported as well as others.

MR. BROWN of Kanawha. I now move to amend the amendment by striking out the whole from the word "ship" and that portion of the amendment as proposed to be added by the gentleman from Wood. I desire to assign the reason. I am opposed, in the first place, to making this Constitution that anomaly of undertaking to provide in the Constitution in all the particulars and measure about executions that issue from magistrates and leave those that issue from his, record courts and the court of appeals to be regulated by law. I expect yet to show that there is no reason for descending into these simple matters in the Constitution. There is an old maxim of law, *"De minimis non curiat lex"*—some things so very small that even the law does not take notice. But here the

smaller the matter the more specific it is made in the Constitution. Why, the legislature is competent to regulate the executions that issue from the court of appeals and the circuit courts that have the general jurisdiction of the State, but of magistrates courts it is not! Again if this question involved the regulation of executions of all these courts I should be equally opposed to it, because it is indefinite to carry out the minutiae, how the execution shall issue, to whose hands it shall come, what the officer shall do in carrying out his duty. These are minutiae and particulars that must ever rest in the legislature to change and alter as circumstances shall prove necessary and proper. That having determined the jurisdiction of the tribunal and given it authority to go on and render a judgment in a given case, to follow the execution which only carries out that judgment in the hands of the officer is out of place in the Constitution and is improper, and I hope it is not the intention to fix these things in the Constitution. If these minutiae and particulars are carried into the Constitution it will be an anomaly, such a thing as I presume has not heretofore been witnessed.

MR. WILLEY. I would say, sir, I heartily concur in the remarks of the gentleman from Kanawha. But then that is a foregone conclusion. The Convention yesterday by a most overwhelming majority decided that these minutiae—these major minutiae—should be retained in the Constitution; that executions should issue so and so. There was a motion to strike out the whole section and insert the proposition that the powers and duties and jurisdiction of the justices of the peace should be regulated by law. But then the sense of this body was expressed in a manner that we could not mistake. It was determined that should not be the case that the legislature should not have that power, and that this Convention would exercise it and incorporate in the Constitution this legislative minutiae; and by a vote of 24 to 18 it was determined yesterday that this section as it now stands, as amended by a hundred instead of fifty should be a part of the Constitution. That is to say, that the matter should not be left to the discretion of the legislature. Now, sir, so far as I am concerned, I want the matter to be adjusted, as I think we have got a very bad bargain. I want to make the best of it and have such safeguards thrown around this and such explanations and modifications of this section as should prevent as far as possible the inevitable conflicts and confusion that will grow out in the practical workings of this Constitution if it be adopted as now shaped. I think my friend from Kanawha is entirely mistaken in saying there is no necessity for designating how summons

shall be issued and all that sort of thing. If you will look into the Code you will find a distinct mode of executions, or returning them, of filing them, of disposing of them in reference to such executions as are issued by justices of the peace from those issued out of courts—and there necessarily ought to be. They will not be courts of record in the matter. There must be some provision whereby they shall be preserved for future reference. Are we to leave this wholly without provision if these executions are to issue in the manner indicated in this section? Ought not the legislature to be required to prescribe some safe manner in which they should be issued, how executed, where returned, how preserved and all that sort of thing that would be absolutely necessary hereafter for the security of the citizen and due administration of justice? I would be very glad if the Convention this morning would reverse the expression of its sense of yesterday, but I have no idea that that will be the case; that it is the determination of this body to insert in this Constitution this minutiae and provisions; but it seems to me eminently proper in that case that we would at least give the legislature some power over the justices of the peace in the country—how process shall be issued and executed; otherwise what do you do? We used to denounce the first constituted county court as an arbitrary body, a sort of despotic institution. Here if you place the protection of the country in the hands of a single justice without any court of record at all, away from the inspection of the public at his own courthouse and without any control by the legislature over him whatever, no control over the administration of his office, the manner in which he shall execute it—he will see and feel that he is perfectly independent of the people because secured in his position by the unbending rules of constitutional law which lift him into the range of his own discretion as to the manner in which he shall execute his duties. I want some provision in here that these justices, with this extraordinary jurisdiction, shall be regulated and watched and controlled in the administration of their duties; and I hope this Convention will adopt the additional clause suggested by the gentleman from Wood, that the legislature shall have power to direct the manner in which the duties of the justices of the peace in prosecuting these actions shall be done; that it will allow some control over these justices in the country on the part of the legislature and the people through the legislature; and especially if in the working of this instrument—as will almost inevitably be the case—we have failed to incorporate some duties that justices of the peace ought to discharge and it will be found necessary they

should discharge—that if we shall have failed to incorporate in the Constitution by name and designation those duties—the legislature shall have power to confer on justices authority to execute those necessary duties. For instance, where do you get authority here for justices to take relinquishment of dower, where acknowledgment of deeds, where to administer oaths, if you leave this section as it is. You leave them shorn of the most useful parts of their authority as now exercised; and I think it is just and eminently proper the legislature should have the power to confer on the justices in the country some of these necessary duties for the administration of justice. I hope the section as reported by the chairman of the committee will be added. It will mitigate my opposition to this section very much because it will leave the power of remedying evils we are proposing to the people and to a very considerable extent has therefore modified my opposition to it. I hope the Convention will see the propriety and absolute necessity of such a thing. And when it is done I should think the committee could modify it to suit themselves well and good. But I want it in the best shape I can get it. I may not get it the way I want it; perhaps it ought not to be; perhaps the majority of the Convention understand the question better than I do—better than the minority; perhaps they are right. But then I want the matter arranged so as to suit my views of the case as far as possible. There is an overture from the other side this morning to modify it in a very essential particular, adapting it much better to my views of what is right and proper. I want to accept it and get it as good as I can, and then if I can make it any better we will accomplish something at last in furnishing a remedy to some extent for the evils which must necessarily grow out of the section with this legislative minutiae in it.

The Secretary as directed by the Chair reported the amendment of Mr. Brown of Kanawha, to strike out from "ship" in the 98th line to the end of the section.

MR. VAN WINKLE. It strikes me, sir, that the contents of the sentence proposed to be stricken out and the new sentence that I have proposed to introduce as a compromise measure are so incongruous that gentlemen cannot vote understandingly on one as a substitute for the other. Unless the gentleman from Kanawha will withdraw his motion till the other is acted on, I will withdraw mine and let his be acted on.

MR. WILLEY. I hope the gentleman from Kanawha will withdraw his motion at present. I suggest to him whether—

MR. BROWN of Kanawha. As I understand, if the amendment of the gentleman from Wood be appended when this is stricken out, I do not know that I should object to it; in fact from hearing it read I am inclined to think I should vote for it, but not as an appendage to this; that is, I do not prefer it as such. This sentence beginning with "Executions" ought to be stricken out unconditionally; that belongs not to the Constitution; it is purely legislative matter.

THE PRESIDENT. The gentleman from Wood is entitled to the floor.

MR. VAN WINKLE. Well, then let the Convention permit me to withdraw mine until the vote is taken on that. As far as the gentleman remarked, it only applied to the next three lines. If the gentleman will let this be added, to come in as if it had been originally reported by the committee, then it will be open to amendment as any other clause. I suggest here in the presence of the committee as accepting additional matter which they would have introduced if it had been brought to our notice; but I do not feel as chairman of the committee authorized to say that I would strike out to the end of the section. It is difficult when you have one matter offered for another for gentlemen to vote understandingly upon them. We have had that more than once. I was guilty of it perhaps last night in offering the amendment I did to that of the gentleman from Monongalia; though in that case it will be understood that while one might prefer to allow an absolute removal of causes another might prefer to allow an appeal. Some members might prefer the amendment in a different shape, and therefore when they came to striking out the proposition of the gentleman from Monongalia, or to vote on inserting mine, mine might not be just what suited them, and therefore the opponents of both propositions might unite and the real will of the Convention not be expressed. Now, what I desire is that we might come to it by two direct votes: one whether this additional clause shall be admitted here; the other whether any portion of what is already here shall be stricken out. If this is admitted, it is carrying out what I have in the name of the committee declared to be the intention of the committee and my belief, which still exists, that the section as it stood did leave all other matters except those it specially defined in the hands of the legislature. The very fact that we left out a specific clause authorizing them to take acknowledgment of deeds and so on shows that was the belief of the committee. But the gentleman from Monon-

galia surprises me in the opinion expressed that power would be forbidden to the legislature unless something specific is put in here showing that the power was ordained or given to the legislature. Well, now, as to a mere question of that kind, I could not be tenacious about it. The gentleman had drawn up what he wished to be inserted to effect the purpose, which was certainly a good one. The object is good whether he is mistaken or not in the necessity for it; and in that spirit of fairness which I hope I may always exhibit I take the very language which the gentleman has written and simply by introducing it at different points produce what is now before the Convention. I thought I was meeting his views. He has in the most gentlemanly and courteous way assented to it and met me I think in the same spirit in which I was inclined to meet him, to make certain this matter on which a doubt hung; and that very certainty thus attained by the proposition I have made after consultation with him being in accordance, as I know, with the views of the committee and those who have been standing up for it, I could have no hesitation in submitting it to the Convention. A mere superfluity of words, I do not so much care for. If it is a mere repetition of language that will be taken care of by the Committee on Revision; but if anything proposed here tends to render absolutely certain that about which there may be a doubt, whether it multiplies language or not, I am for admitting it. It is better that when this Constitution goes before the courts, or before the people to read, and the lawyers to write opinions on it, it should be so plain and explicit it cannot be misinterpreted. It is in that view, and with that view only and to accommodate the various opinions that seem to exist in the Convention—to render explicit what is supposed to be uncertain and to give to all a form of language of which the meaning cannot possibly be mistaken that I offer this additional sentence.

Now, the gentleman proposes to strike out a portion of what is already in. My impression is that what is already in simply relates to the territorial jurisdiction and that that is within the scope of the vote of the Convention yesterday and of the admission of the gentleman from Monongalia and the gentleman from Doddridge who made the proposition to strike out, which was voted down yesterday, both of them saying they did not wish to interfere with the question of territorial jurisdiction and it was only in reference to this part that they thought the legislature should have some control over. They are willing now to allow us to fix

what sort of actions shall be brought before justices of the peace, what shall be the extent of jurisdiction, so far as it is a compromise of matters, and they are willing also to leave what relates to territorial jurisdiction. Now, when this sentence is amended as offered, perhaps it will do no more than this and I submit whether we ought to take the time we have already spent in this matter in very ample and full discussion we have had, with the views of members so generally known and the tendency of adding this being to compromise all views and satisfy all parties—whether this sentence might not well be retained in the report.

I will call the attention of those who have acted with me in reference to this matter that the additional clause authorizing the legislature to give additional power to justices and constables and give to the legislature more jurisdiction if they choose to place it in there; does add within their townships, to give them additional jurisdiction and powers within their townships, so that the principle which we were contending for and which we have most strenuously contended for, of confining their jurisdiction to their own townships, is preserved in the amendment, and as I understand it, with the assent of the gentleman from Monongalia. Now, it strikes me this will meet all views. But the amendment of the gentleman from Kanawha is more extensive perhaps than even he intends. These words "executions issued by a justice" may be directed to and executed by the constable of the township where the judgment is rendered or in which the property to be levied on is found. Now, the amendment introduced in the last clause is certainly an important amendment. I am thankful that the gentleman from Monongalia called attention to it, because a judgment may be rendered and there may be no property in the precise township or in the county; but there may be property in a township in an adjoining county. In that case the execution goes to the constable of the township in which it is found, and it ought to be his right to serve it and make the fees. And then follows this provision, which is also moved to be stricken out: "in case of a vacancy in the office of justice or constable in any township having but one, or of the disability to act of the incumbent, any other justice or constable of the same county may discharge any of the duties of their respective offices within said township." That disability may arise from sickness or from having to sit in the case—from all those things which render it improper for a justice or judge to try a case in which he has a personal interest. There certainly ought to be some provision, because the very fact that we have endeavored—and

that is the distinct sense that this Convention has expressed more than once—to confine jurisdiction of these justices in civil matters to their own township—making provision providing for the case of their disability to act becomes absolutely necessary; the more so that we do not allow any second justice in any township in which the inhabitants do not exceed twelve hundred. Strike this out; if the justice is sick, all the business of his township would have to wait till he got well. So that even the object of the gentleman from Kanawha does not, I think—ought not—to include that last sentence, according to what he has expressed so far. The simple sentence beginning with "Executions" in line 98 and ending with line 100—now, if gentlemen think that the new clause that I propose to introduce is broad enough for their purpose: "the manner of prosecuting the aforesaid actions, and of issuing summonses and executions, and of executing and making return of the same, shall be prescribed by law," so far as that sentence is concerned it may be provided for here; but I do not feel authorized to strike that out without the action of the Convention. If the gentleman's motion was confined to that, it might present the question in a fair shape. But how this question of vacancy connects itself with this I cannot see.

MR. BROWN of Kanawha. In my view in looking at the case I was not regarding that question of vacancy. I have no objections to that. The 98th, 99th and 100th lines are the objectionable lines and are the point I had in mind in moving to strike out.

MR. VAN WINKLE. I do not know that I would have any objection to strike that out if this goes in. This is permissive merely that executions issued by a justice may be executed.

MR. BROWN of Kanawha. To save time I withdraw my motion for the present, with a view of presenting it again at another time embracing the other lines.

MR. VAN WINKLE. If this amendment is thought to be full enough, I do not know that I would insist on it.

MR. WILLEY. Then the language of his additional clause would perhaps have to be modified. It refers to things going before. It says the manner of issuing "such executions."

MR. VAN WINKLE. No, sir; the issuing of summonses, executions, etc.

MR. WILLEY. That will do.

MR. VAN WINKLE. I would be willing to strike out that one sentence about executions, leaving that "in case of vacancy, etc." and insert this at the end.

THE PRESIDENT. The question is on the amendment of the gentleman from Wood.

MR. STEVENSON of Wood. I wish to make two or three remarks on the matter. I do not wish to make a leap in the dark here if I can help it. While the amendment of my colleague will probably meet the difficulty which has been in my mind at least for the last day or two, I do not know that it will. I do not myself wish to give justices and constables certain powers and define certain duties in this Constitution unless they have ample means of carrying them out. This would be holding the word of promise to the ear and breaking it to the hope. It appeared very clear to me and I think the most of this Convention in the discussion of an amendment to strike out "trespass" the other day that there is quite a large number of cases that cannot be reached by the actions to which the jurisdiction of justices is here confined, on actions of assumpsit, debt, detinue and trover. I think that matter was made very clear. It is true it was admitted that the injured party in such cases could have a redress to some extent upon a criminal process, but it was equally clear that such a process would be rarely entered in the court—at least for such things as killing a man's hog, breaking down his fences, carrying off his timber and the destruction of his crops by the hungry and ferocious stock of his neighbor. Now, sir, I had intended to offer this amendment, and I will read it now just as a matter of illustration, not that I intend to offer it if I was in order. Because if I understand the proposition now before the Convention it will mend the difficulty. What I had contemplated was to insert after "trover" in line 90 these words, "and any such other actions as may be prescribed by law."; so that it would then read: "the civil jurisdiction of a justice shall embrace all actions of assumpsit, debt, detinue, trover, and any such other actions as may be prescribed by law." If that is covered, sir, it will meet one great difficulty in my mind; because I feel so well satisfied that injustice will be done to a very large class of the best persons in the community unless some jurisdiction is given to the justices of the peace in these cases which were mentioned here the other day; and it seemed to be conceded all around that such

jurisdiction was not extended to the justices of the peace at least in such ways as would give justice to the aggrieved party. If it is thought by the Convention that that difficulty is met by this, I certainly shall vote for it.

MR. VAN WINKLE. In my own opinion this would give the legislature the power to authorize an action for trespass and confine it to personal property.

MR. WILLEY. There is no question of that, whether the legislature ought to do it or not, we have the history of all our past legislatures.

MR. VAN WINKLE. If it was then to work badly they can take it away.

MR. WILLEY. I would just say that my friend from Wood drew out a little law in the discussion the other day touching these little trespasses. A man goes on my farm and cuts down a tree; or his stock eats up a shock or two of my wheat, or anything of that kind. I waive the tort and bring an action for the value of the property. You can get vindictive damages where the trespass is malicious. You have the additional remedy of bringing a civil action, waiving the tort and trover. Or you may get him into court as a public malefactor for having maliciously injured the property. The remedy is I think quite ample; but then if necessary the legislature can provide that these small trespasses shall be tried before justices, because it expressly says "such other jurisdiction as may be deemed expedient." That fully embraces this whole class of cases. That was one object I had in view. I am very willing to get this compromise. As I said the other day, my only objection was to clothing the justice in the country with such irresponsible authority. Gentlemen have argued all the time that the opponents of this measure were opposed to the extension of the jurisdiction. I was very much amused at my friend from Doddridge, who after he had been denounced as being opposed to the extension of the jurisdiction of justices of the peace, very modestly gets up and says that as a member of the legislature he reported the bill that extended their jurisdiction to one hundred dollars. That was not the objection. It was that you were clothing justices in the country with dangerous constitutional power beyond the control of the legislature. But that matter is settled. I am very willing that every provision shall be retained in the Constitution to give full efficiency to its township system; and if it is necessary

to retain this provision in the opinion of the friends of that system —because I have not examined it—as I said I am favorably impressed with the idea of it in my general apprehension of its operation—if the friends, I say, of the township system who have considered it maturely believe that in order to secure its efficiency that provision in regard to the mode of execution that it is now designed to strike out ought to be retained, I am willing to retain it. It will be no harm, at any rate, while I think the additional provision to be added here remedies every evil; gives ample authority to make provision in the premises. The argument yesterday was that the legislature might not be favorable to the township system and be disposed to embarrass it; hence it was necessary in the opinion of the friends of that system to incorporate in the Constitution all these general provisions that would compel the legislature to make the necessary provisions to give it efficiency. If they still retain that opinion, if it is necessary to retain that provision in the Constitution in order to give that efficiency, I am willing it should remain. If not, I see no necessity for it. Because, as I have argued, I am opposed to anything in the Constitution in regard to this legislation about the jurisdiction and duties of justices of the peace. It is a matter peculiarly belonging to the legislature. Having decided otherwise, I desire to be understood as willing to implicitly submit to the sense of this body. Therefore, I want to make, as I said, the best of a bad bargain and throw all the safeguards around the justices of the peace. It has been decided that these provisions shall be retained. Let them be if the majority desire it. I am very much pleased if the Convention will allow this additional clause to be added.

MR. STEVENSON of Wood. I wish to say to my friend from Monongalia that I did not affirm the question of the law as it was made in reference to the point to which he alluded. It was very fresh in my recollection, and if I can retain everything that is said by my friends of the legal profession, I expect to be considerable of a lawyer. I recollect that this answer was made to that: that although a man would get the value of a tree that was cut down by pursuing this course, yet that would be very poor pay indeed for his loss after he had gone through the anxiety and trouble and loss of time of a trial for that purpose; but very little satisfaction, indeed, to know that his neighbor was prosecuted as a criminal.

MR. WILLEY. Is it not a dangerous power to place in the hands of any one individual on the face of the earth, the discretion of vindictive actions?

MR. STEVENSON of Wood. I do not think that provision need be left so absolute as the gentleman supposes. It would be left with the legislature as they thought best to meet the case, and I desired to let his powers be sufficient to accomplish any purpose with which the legislature might clothe him.

MR. VAN WINKLE. If we could make a special provision on the subject—if we should say he should pay double damages—the power of the legislature over the subject would be absolute; and I am prepared to say now if this can be taken as a compromise I am personally willing to strike out the words the gentleman from Kanawha now objects to. I believe the purpose that the friends of the section as it stood had in view will be accomplished. The jurisdictions of these magistrates will be confined as far as it is best to do so, and that that in the beginning was our principal object, leaving the legislation to define all about how executions shall be served, summonses issued and so on. Personally I am willing to that, especially if the matter will be taken as an attempt to settle it without any further debate.

MR. LAMB. I desire to draw the attention of the committee to another subject in regard to this clause and intimately connected with the amendment that has been offered. This clause, I take it, fixes upon us a constitutional provision with these forms of action: assumpsit, debt, detinue and trover. Those forms are put beyond the sphere of legislative action. How far if this provision prevails will the legislature be able even to regulate these forms? If we adopt those particular forms of action as a constitutional provision, how far are the legislature at liberty even to regulate them? Can they dispense with a part of the formalities which now constitute the action of trover and retain the balance? Or have they authority—?

MR. VAN WINKLE. My friend was not here yesterday and he is not aware of amendments that were introduced when that clause was under consideration. It now reads "shall extend to." The Convention has settled all in reference to them. They are not now fairly before the Convention.

MR. LAMB. I do not see that that would relieve the matter of the difficulty I suggest. Still you use these forms of action in

your Constitution. Suppose it should be deemed expedient hereafter, as other states have done where it has been found—

THE PRESIDENT. I think it would not be in order to enter upon the discussion on the propriety of retaining these forms.

MR. LAMB. The Convention is considering a provision vesting the legislature with jurisdiction to regulate the extent of jurisdiction and powers of justices of the peace. I think it is intimately connected with that portion of the amendment now under consideration.

THE PRESIDING OFFICER. But so far as the question to which the gentleman from Ohio now refers is concerned this matter is passed upon and fixed by the Convention, so that there can be no remedy in that respect without a reconsideration of the vote on the first sentence of the section.

The question was then taken on Mr. Van Winkle's amendment, and it was adopted without a division.

MR. BROWN of Kanawha. I renew the motion to strike out beginning with "Executions" in the 98th line and ending with "found" at the end of line 100. Strike out three lines.

MR. VAN WINKLE. Well, sir, I will advise those who have acted with me to assent to striking this out; that the amendment just introduced contains a provision that the legislature may regulate this; and as it contains the words "in their respective townships" our great object will be preserved. The execution is to be served in any township. It will simply provide how the constable of that township can serve it. I think our purpose is gained and objection on the other side is obviated, and we may cordially agree on striking out these three lines.

The question was taken and the amendment was agreed to.

MR. BROWN of Preston. I wish to call the attention of the Convention to the words in the 91st line, substituted this morning: "or, being a non-resident of the State has effects" within his township. I desire to make inquiry whether the word effects is a proper word to be inserted. I think not. It seems to me this jurisdiction ought to extend in case of non-residents not only to personal effects but also to real estate.

MR. VAN WINKLE. I believe that "effects" is the most ample word that can be used. It includes, I think, everything.

MR. BROWN of Preston. I was going to suggest the word "estate" which is a more comprehensive word.

MR. VAN WINKLE. Well, sir, I leave it to the legal gentlemen to say which is the better word.

Several members suggested the use of both words.

MR. BROWN of Preston. I move that the words "effects or estate" be employed.

The amendment was adopted.

MR. BROWN of Kanawha. I was not here when the forepart of this section was under consideration. I desire to amend this section in the second line (89) by inserting before "assumpsit" the word "indebitatus". The Convention have stricken out the word "trespass" very properly, and the same reason that induced that ought to induce them to insert the word indebitatus in this case. "Assumpsit" is a law term, one of those words which has its specific definition, embracing almost everything arising out of a contract. Indebitatus assumpsit is an alteration of the word "assumpsit" and always confines the party to that character of assumpsit that implies debt in which the value of a thing is in controversy. Assumpsit has a wide range within debitatus assumpsit which has no reference to debt but arises from breaches of contracts and almost every question to which contracts can reach—contracts for the sale of everything for which contract is broken and damages arise out of it. It may cover frauds and deceptions of every character and description involving the most common matters that go into the higher courts. Indebitatus assumpsit refers to that matter of controversy which is the subject of contract.

I hope, therefore, the Convention acting on the same principle that induced the action in striking out trespass will insert the word indebitatus.

MR. DERING. While I have great confidence in the gentleman who has just taken his seat, yet, sir, I fear in tampering with this first section that we have already passed upon I do not want any alterations put other than are there. I do not understand the technical forms lawyers may use. I prefer to touch that section as lightly as possible and that it may remain just as it is. I do not know the legal effects of his motion or how it would affect the

whole section; but it seems to me we ought to go ahead very carefully and not limit the jurisdiction of magistrates by any motion coming from that side of the house (Laughter).

MR. BROWN of Kanawha. When gentlemen are not familiar with the law terms they ought to be careful how they use them. Those who deal with these law terms know that we have a legal definition that has received the sanction of the courts through long years, the practice through more countries than one and in every state in the Union. They ought to be very cautious indeed how they use terms that may involve them in intricacies from which jurisdiction will be wholly incompetent to extricate itself. I therefore desire that gentlemen shall study the terms that are used. I gave the definition of two terms, and I hope the gentlemen will call on the lawyers. But I did hope we had other gentlemen here who were more than lawyers conversant on this subject to define the terms they use. Because unless this Constitution defines the terms it uses the courts hereafter must understand that when the Convention used certain terms they knew what they meant. So I say it is more necessary that the word indebitatus should be inserted so as to indicate what assumpsit you intend shall be got—whether you intend to throw open the whole action of assumpsit to justices of the peace involving intricacies which gentlemen who are sticklers for the term do not comprehend, it is the more necessary that we should undertake to define the meaning.

MR. SOPER. I took some pains the other day, sir, to show the necessity of the action of trespass and I said to gentlemen who interposed objections that the legislature should have power to restrict. Now, I am opposed to the motion of the gentleman from Kanawha. He might as well move to strike out the word "assumpsit" entirely. He would attain his object, because it is precisely he knew I wish to retain this word "assumpsit," or more properly I would prefer the action of trespass on the case. But to the amendment, sir, I am opposed because they are a class of cases which ought to be determined before a magistrate embraced in this action if it is now retained. For instance if you purchase a horse of an individual, and he warrants that horse to be sound and true in harness—anything of that kind. I was remarking, sir, having a plain and familiar case, you have purchased a horse, he is warranted to be sound, good in harness, or your warranty may extend to other matters. When you get your horse you find it is not according to the contract that you have made at the time of the pur-

chase and you have sustained damages ten, fifteen or twenty dollars if you please. Now, sir, I want the party to have the right of going before the magistrate and recovering those damages in a case of action in assumpsit. They are unliquidated damages and it is applicable to every case of contract. If you have your wagon repaired or well dug, or anything of that kind—all contracts, wherever there is a breach of contract and your damages are not large enough to authorize you to go before a court of record, you want the privilege of going before a magistrate and have it stated there. Hence, I have shortly, briefly stated wherein cases arise in the transaction of any business in which the retaining of this action would be perfectly proper, and it would be the only way in which a party could receive his remedy. I hope, therefore, that the word will stand as it is in the section.

The question was taken on the motion and it was rejected.

MR. VAN WINKLE. I would like to move the amendment that I had offered as a substitute, subject to an appeal to the circuit court of the county, to insert, "where such value in controversy exceeds twenty dollars." I offered the limit. There should be a limit and it appears to me anything under ten dollars would cost the county a great deal more to try than the whole value in controversy. I think that as we have raised the jurisdiction of magistrates there will probably be more care taken in the selection of them, or perhaps, as we will say in Preston with 32 magistrates they will be brought down to 12, that the 12 best ones will probably be chosen. I think while something more should be entrusted to the justices of the peace than under former circumstances. That is one of those questions of expediency about which I will not be tenacious, only that I think there ought to be some limit downward below which jurisdiction should not be allowed. I therefore, make the motion.

MR. WILSON. I would move to strike out "twenty" and insert "ten".

MR. VAN WINKLE. I would say "when such value in controversy."

MR. SOPER. I am opposed, sir, to the motion. I hold it to be the right of every citizen, if he considers himself aggrieved by a judicial decision, as the means of litigating it to his satisfaction he should have the privilege of doing so. I know, sir, we have had

a great deal said here about the poor man, but a man may be so poor he would submit to an injury sooner than incur the expense that would far exceed what he would gain if he should go into litigation. But that is a matter I apprehend that the Convention, or legislature would have nothing to do with. It is a matter resting in the discretion of the individuals themselves. Now, sir, I have known actions brought in justices' courts for small sums and have known important principles to be settled which originated in actions for small sums in justices' courts. I recollect one now that I will mention. It arose in this way. A party placed in the hands of an officer a summons to be served. The fees for serving that summons would probably amount to 50c. It would require the constable to travel four or five miles to get his fee amounting to that sum. The officer refused to go and do it at that time. The result was the plaintiff promised to pay the officer an addition of $1.25. On the strength of that promise he went and executed the process. After the process had been executed, the plaintiff considered himself imposed on by the officer. He refused to pay him and the officer brought the suit for the $1.25. That case was litigated through three or four courts and it was determined in the court for the correction of errors in the court of New York; and this principle established that an officer whose compensation is fixed by law for services has no right under any circumstances whatever to require or take any additional compensation. That I conceive to be a very important principle and it originated in a justice's court; and if there had been such a rule as a constitutional provision as we seek here to interpose that remedy would never have been obtained. And, sir, a variety of such cases may arise. That and other reasons, sir, induce me to oppose this motion. The law in Virginia has been conflicting on this subject. I believe, recently however, the old restriction to judgments of $10.00 has been re-enacted and where the judgment is not over $10.00 the party cannot appeal. Well, now, sir, I have known instances like this where a designing constable with a pliant magistrate would so work and contrive to obtain a judgment for $9.99 which evidently was an improper judgment, for no other reason than to take advantage of the individual and prevent him from bringing his appeal into court to get a remedy. Other cases, sir, might arise; but I am opposed, as I before remarked, to restricting any individual who believes that he has a right that he shall pursue that right to the fullest extent of the law in order to have it completely settled to his satisfaction, or until he shall have used all the remedies

within his power by which he must be satisfied. There is probably, if you retain this system of appeal in carrying up these actions to the circuit court where the amount of judgment is not entered beyond $10.00. I suppose there will be a few cases where an individual would incur expense, he would rather pocket the injury than to go farther. The legislature have got the power of regulating this whole matter. There is no necessity of our putting it here in the Constitution. The legislature will probably regulate it and give the party an appeal only in cases probably where the judgment of the magistrate shall exceed $20.00. Under that they will give the party a remedy by writ of certiorari, to be obtained on the event of the facts that take place before a magistrate showing what questions of law may arise in the matter be presenting that an officer be designated if he should be of opinion that there is error in the judgment below he will authorize the facts to be certified and returned to him by the magistrate and then he will pass on that question. That could be done without having witnesses there and $10.00 to the magistrate for making out his return will be full compensation.

Now the difficulty at present to getting this returned from magistrates is this. Magistrates are not in the habit of taking down the testimony, in writing. Most of them I am acquainted with cannot write very readily; the writing of a great portion of them is done by the constable. I have noticed some that could not do it, but I apprehend under the new order of things no man will be elected as magistrate unless he be a competent man in every respect, one that is perfectly competent to make every necessary entry in his docket to show the transaction before him and who will take down the testimony and return it according to the truth if it becomes necessary.

Now, sir, it will be for the legislature to determine whether they will now or hereafter provide this remedy; but I am leaving it with the legislature to act as they shall be advised according to representations from the different parts of the State from the people on this subject; but I am opposed to having this destroyed here by constitutional provision which would prevent an individual under any circumstances from carrying up his case and having it properly determined. Therefore, I hope the amendment will not prevail.

MR. STEVENSON of Wood. I wish to make a remark here that seems to me at least, a reason which appeals at present to justify

the limitation to some amount below which a man cannot appeal. I suppose there is hardly any case appealed to court over the amount of $10.00, the amount now fixed by law, where it does not cost either, or probably both parties more than the whole amount at issue in the trial, so that there could be no good accomplished, it seems to me by cutting the amount down to $10.00 so far as the mere amount of money is concerned. Suppose, however, we specify another amount that a man may take an appeal for, an amount much less than $10.00. There is a poor man who has been working at something until his wages amount to three or four dollars and he sues for it. The man he sues is a wealthy man and he takes an appeal on it. The poor man is of course not in a situation to carry on the contest in court. The result is that case may be unjustly dealt with if the limit is not fixed to about $4.00 or above it. I am rather impressed to favor that amendment of the gentleman from Ritchie making the amount $10.00 instead of $20.00. I think that would probably meet the difficulties that appear to be encountered when you get above $10.00, or below it.

MR. STUART of Doddridge. I dislike very much to go into these details, but I desire the Convention shall fully understand these matters. I myself would be in favor of the right of appeal in all cases, for several reasons. One reason is, sir, that whenever a justice of the peace knows his judgment is liable to be appealed from he will give that judgment with more care. I do not care what court you take it to, a justice of the peace when he knows there is an appellate jurisdiction, he will always exercise more care in rendering up his judgments. It will beget a carefulness on the part of the magistrates if we would not give them a jurisdiction without any appeal at all. If a man is wronged, he ought to have a remedy. If a magistrate gives a judgment against me for one dollar that was contrary to law, I would feel that I was wronged and ought to have an appeal. The gentleman says this would give an advantage to the rich man over the poor. But suppose the rich man could exercise sufficient control and influence over the magistrate as to render a judgment against his poor debtor and he gives a judgment against him contrary to every principle of law, do not you see, sir, he would be just in as bad a fix as before and it seems to me a little worse, because if he had a just debt and it was appealed the party who takes the appeal would have to give security. Wherever an erroneous judgment was rendered against him, he would have no remedy and it would be lost.

These are my views. I must admit I would be for the lowest possible sum I could get. I will vote for the amendment of the gentleman from Ritchie, then against the amendment as amended.

MR. BROWN of Preston. I am in favor of fixing some definite sum from which an appeal may be taken, and I think the country has pretty well settled down to the opinion that that sum should be twenty dollars. A few years ago an appeal could be taken for any amount, and I remember the whole country was dissatisfied with the statute and it was repealed and the amount of ten dollars, which had existed before that time, was substituted. In reply to the argument of the gentleman from Doddridge, which intimates that we should not fix a sum at all, I would simply say that it is certainly very bad policy. Why, sir, in our county I knew a controversy about seven cents when that law existed and the expense to our county in determining the question for the services of the court alone amounted to ninety dollars, and the costs to a very considerable sum. So I think there should be some limit, and that limit is proposed to be inserted in the constitution, and I really cannot see any reason for that, because I believe the amendment of the gentleman from Wood gives full power to the legislature to control that question, and I see no remedy in inserting it. But if it must be inserted, I insist, sir, that we insert the amount of ten dollars.

MR. HERVEY. I agree entirely with the gentleman from Tyler. The case alluded to by the gentleman from Preston has been obviated. A man cannot walk away from a justice's docket if a case has been rendered against him without either giving security for costs or bond for his appeal. But if a man has been wronged even to the extent of a few dollars, if the party is willing to do so, where can the objection lie. He takes the whole responsibility. I should vote against any sum.

MR. DILLE. I desire to make a single remark on this subject. And I must say that I am decidely in favor if a sum be fixed in this Constitution that it shall not be less than twenty dollars. Now, I do this and from the best of motives. I have listened to the trial of a great many appeal cases. I have been connected with some and I never have seen a single appeal cause where the amount involved was less than twenty dollars, that both parties, however much they may have been wronged—however much they may feel themselves injured by the judgment of the magistrate—but what both parties came out of the court worse off than when they first

appeared before the magistrate. It is upon that ground I am in favor of twenty dollars.

MR. BROWN of Kanawha. If the word "assumpsit" had been stricken out, I am not sure but I should have voted perhaps for some of these amendments for an alteration of the appeal; but since the Convention has declined either to strike out "assumpsit" or add "indebitatus" and leaves the question open for unliquidated damages to any extent; because I maintain that claims, as stated here, for one hundred dollars may involve the controversy of millions, that you can counterbalance and bring it down to get the amount of the judgment within a hundred while you litigate all outside of it; that since the question is open here to unliquidated damages I am in favor of letting parties appeal on any amount whatever that the judgment may be for; and as gentlemen have addressed themselves to this subject with reference to the security and safety of the poor debtor, I wish to put a case and see how far the debtor can be benefited by the alteration of twenty dollars to ten. Suppose one man sells another a hog for six or seven dollars and the other after while kills and eats the hog and then declines to pay for it. The other asks him to do it and he insists that he is not bound to do it for the other man sold him a hog that was not his own. The question arises for the value of the hog. Neither cares a straw about the money. The real controversy is whether the man has practised a fraud in selling that which he did not own; and the question which affects the reputation and interest and standing of the individual is the real matter at stake. The justice renders the judgment against the party, refusing to permit him to collect his money on the ground of fraud on his neighbor. I want to know if justice to the poor man would give you an appeal to test in a court where he could show the facts of the suit, involving not the mere matter of five dollars but his standing among his neighbors in the country—that which once fixed by the action of this justice's court left him no appeal and consequently no redress, and he and his children are to be branded thereafter as "hog thieves," and he cannot right himself by a tribunal that can rectify the whole matter. Is there any justice in this? Justice requires him to carry it to the limit. And that is the security of the poor man as much as of the rich—and a little more.

MR. HAGAR. One party seems to think that justice can be obtained only before a magistrate, the other that it can be got nowhere else only in the court. In reference to this appeal I will

mention a case that are facts. I will not suppose them. One of my neighbors sold another a cow beast at eight dollars. It did not just please him and he turned it out and let it go home and refused to pay for it. The man of course warranted him for the eight dollars and procured a judgment. The other man had to give security, was involved in a cost of fifty dollars and finally had to pay for the cow. Another appeal I knew was for a dollar and a half, which after passing through three or four courts amounted to about sixty dollars. The judgment was confirmed in both cases. My notion is there ought to be some fixed amount from which an appeal might not be taken below it; and as the judgment of the Legislature of Virginia has fixed that sum at ten dollars, I am in favor of the amendment to the amendment.

MR. BATTELLE. I wish to ask a question of the Chair. If the amendment to the amendment, offered by the gentleman from Ritchie, should obtain, will the Convention then take a vote on the amendment as amended?

THE PRESIDING OFFICER. Yes, sir; it will be competent if you wish to amend by inserting any other amount.

The question was submitted and Mr. Wilson's amendment to the amendment agreed to; and the question recurring on the amendment thus amended, it was adopted.

MR. VAN WINKLE. I now move the adoption of the sentence as amended.

MR. SOPER. I propose to amend by striking out the words "value in controversy" and substitute "amount claimed," in the 92nd line. Now, sir, my object is this: here is a long running account between two individuals and the balance claimed is one hundred dollars or less. The amount in controversy, I apprehend will be the amount of the accounts on the respective sides. If there are accounts amounting to one hundred dollars on each side, the amount in controversy will be two hundred dollars. I want this so that the party shall be entitled to try the amount of the existing claims between him and the defendant if they exceed one hundred dollars where he claims only a balance of that amount. But it appears to me the words "value in controversy" in the Constitution here may have a controlling influence to restrict the parties from going into court to settle if the balance sheet accounts existing between them are more than one hundreds dollars. It is with that view I shall ask

to strike out the words "value in controversy" and insert "amount claimed."

MR. VAN WINKLE. The words "value in controversy" are the words used in the Constitution of the United States. They are concise and express it, and it appears to me that they cover the case spoken of by the gentleman from Tyler. It is the balance of an account, of course, that is in controversy, although the whole account may be examined. However, on the principle I have heretofore avowed, to make more certain that which is already certain but which may be in doubt, I would suggest to the gentleman that it be added, "value in controversy or amount claimed."

MR. SOPER. I am satisfied with that, sir.

MR. BROWN of Kanawha. If I understand the effect of the gentleman's amendment, by itself it would be highly proper; as it stands is to give this unlimited jurisdiction to the justices of the peace. I understand the amount in controversy is that if a man claims a thousand dollars and the other claims nine hundred or some other sum, that each entire claim is the amount in controversy.

MR. VAN WINKLE. "The value in controversy" is certainly the difference between them.

MR. BROWN of Kanawha. I suggest they are two separate claims and have to be tried separately.

MR. VAN WINKLE. I have no objection to the other word.

MR. BROWN of Kanawha. Your amount in controversy may always be more than the amount that is ascertained to be due. I think the amendment of the gentleman from Tyler expresses the case truly, simply, certainly and avoids all the difficulty which must inevitably arise and will be the subject of conflicting jurisdictions between the magistrates and circuit courts until the whole question shall be finally adjudicated, by the court of appeals. And then I imagine under any such a provision as this in the unlimited jurisdiction of the justice court—in other words, making your circuit courts a mere empty shell, or only an appellate tribunal. It certainly only is the intention to give the party the right to sue where he claims a hundred dollars and no more; and if his claim amounts to more than that he shall go into another court to make his offset.

MR. VAN WINKLE. I understand the gentleman from Kanawha that the amendment is proposed to cover the matter according to his view.

MR. BROWN of Kanawha. Yes, sir.

MR. VAN WINKLE. Well, if gentlemen think it makes it more explicit, I have no objection to it.

The amendment was agreed to, and the 7th section, as amended, was adopted.

The question recurred on Section 8, which was reported by the Secretary as follows:

"8. Every justice of the peace and constable shall be a conservator of the peace throughout his county, and the criminal jurisdiction of the former shall be co-extensive therewith. Criminal and peace warrants may be served by any constable thereof, under such regulations as may be prescribed by law. Every justice shall perform the duties of the former office of coroner within his township in cases of death by violence or casualty, and may if required, act as such in any part of his county. The Boards of Supervisors shall designate one or more constables of their respective counties to serve process and levy executions when the sheriff thereof is a party defendant in a suit instituted therein, and to perform the other duties of the said former office."

MR. VAN WINKLE. I wish now, if I can, to introduce, with consent of the Convention, before it comes up for amendment as it were, some clauses which I think will perfect the section and remove objections which I am led to expect from remarks made in reference to the form of the section. I will propose, at the end of the 108th line to introduce; "The powers and duties of both offices shall be defined by law;" so that it would read: "Every justice and constable shall be a conservator of the peace throughout his county, and the criminal jurisdiction of the former shall be co-extensive therewith. The powers and duties of both offices shall be defined by law." That is to remove the uncertainty which gentlemen found in the previous section. It does not, I think, depart from the views of the committee who supposed the legislature would have that power. I would then be willing to strike out the 109th and 110th lines. "Criminal and peace warrants may be served by any constable thereof, under such regulations as may be prescribed by law." It is not the disposition of the committee to confine that at all, but whenever there may be a breach of the peace

they may act at once, because the rights of these officers as conservators of the peace being made co-extensive with the county, the nearest constable should be called on if so provided by law.

I gave notice I intended to offer, on my own account, an amendment that justices may try and adjudicate all misdemeanors, etc. The object I may explain further when it is proper to offer it.

In line 117 I would suggest to insert by general consent, after "therein" the words "or is under any other disability." That he may serve when the sheriff is unable to act. I further intended to suggest endeavoring to dispense entirely with the duties of coroner in the consideration of what is between lines 106 and 110. Then I would propose my amendment for dispensing with the duties of the coroner. I will therefore ask to proceed to consider so much of section 8 as is included in lines 108 and 110; and I will move to insert after the words "therewith" at the end of line 108 "that the powers and duties of both offices shall be defined by law."

MR. SOPER. I would suggest, sir, the striking out the word "county" in the second line.

MR. VAN WINKLE. I am now merely trying to perfect the section by adding additional words. That amendment would come in after that.

MR. SOPER. It is a substitute for the one you proposed. Strike out the words "and the criminal jurisdiction, etc."; then I propose to strike out from "county" in line 107 to "as" in line 110 and insert "and have jurisdiction in criminal cases therein." I offer that as a substitute.

MR. VAN WINKLE. I have no objection to accept the gentleman's substitute if there is no objection elsewhere.

MR. SINSEL. I would just ask the gentleman from Wood if there was any necessity for inserting the words proposed after having amended the 7th section?

MR. VAN WINKLE. Yes, sir; that relates entirely to civil jurisdiction. This relates to criminal jurisdiction.

The amendment was agreed to.

MR. VAN WINKLE. I now offer the amendment that I indicated: "The justices of the peace may try and adjudicate all misdemeanors and breaches of the peace." I think in the regulation

of the police of the county and townships this will be found a valuable provision. It is just that which exists in all the cities where there is a police. In Parkersburg, I believe, our recorder does this. I do not think they are allowed a fine over five dollars; but every breach of the peace or assault and battery, they are brought up and usually both parties get the fine. The matter is adjudicated at once and fine imposed, and in that way we keep a pretty quiet town. We have a class of population there since our road came there that makes it necessary perhaps to dispense this quick justice. I cannot see that there can be any objection to the same power being exercised by a justice in the country, as police justices in a town or city all have them, not only here but elsewhere. The certainty of punishment is a much greater argument to deter from the commission of crime than the amount of it. Speedy and certain punishment is the most effectual preventive of crime. I intend, sir, to offer another amendment as a separate and independent section here, after we get through with this one, allowing a jury in civil cases where the amount exceeds a certain sum and also a jury in any cases of this kind where the penalty is imprisonment; but for these slight offences, breaches of the peace, which lead always to a greater quarrel afterwards is not promptly suppressed, to bring them up and punish them at once, to prevent all the great expense of indictments of grand juries and so on, where the offense is trifling. We appropriate these fines in our town to the laying of curbstone, and our papers announce that such a gentleman was taken up and fined so many yards of curbstone. We have a very quiet and peaceable town. We have a regular police force of some four, I believe, and frequently on Saturday nights the force is increased. Men come into town frequently and get intoxicated and then into a quarrel. Well, if you are to wait for the slow process of grand jury they may quarrel and fight fifty times again before you reach them. But we find by this summary mode of disposing of them that they are very careful when they come into town and behave themselves.

Why not have the means of enforcing the same state of good order through the townships and counties? It strikes me it is desirable; and if it is known that punishment is sure to follow breach of the peace that public opinion will sustain the justices of the peace in inflicting it, I think there will be less of them by a great deal, less of them very soon. I think that perhaps what is needed in order to produce a better of observance of order is a more speedy punishment. Now a justice can take these men up and

bind them over to keep the peace. That amounts to very little. But the fine following the offence quickly will be, I think, an effectual safeguard. There may be other things besides fighting. We have had to punish several times in that town for indecent exhibitions of the person, and many other petty misdemeanors such as that the fine would not exceed the amount of five dollars, and imprisonment thirty days. It seems to me it could be disposed of on sight.

MR. WILLEY. I have no objection that I know of to expediting the punishment of offenders of this class. The objection I have is to encumbering the Constitution with criminal laws and civil legislation. We give justices of the peace the necessary criminal power deemed proper in the estimation of the legislature for the security of peace and good order. This amendment, following right on the heels of that clause of the Constitution proposes to take from the legislature its authority to regulate certain functions of the justices. I think we had better leave it to the legislature, sir.

MR. VAN WINKLE. I will accept the gentleman's suggestion and withdraw it, sir, hoping the legislature will do something of the kind.

MR. SOPER. I hope it will extend it to the infliction of a fine of fifty dollars and six months imprisonment in the county jail.

MR. VAN WINKLE. I suppose it will be agreeable for me to ask to have the final vote from the beginning of the section down to the amendment of the gentleman from Tyler. I move that so much of the section as precedes the 111th line be adopted.

MR. BROWN of Kanawha. I confess the abandonment of that proposition strikes me as very singular. The Convention has shown a very determined purpose in fixing in the Constitution the civil jurisdiction of the justices as to a few dollars; but when the public weal comes into question, securing it against the depredations of those who regard no law and pay no fines by summary compensation and justice to secure the public, why, it is a matter to be disposed of in the hands of the legislature. The more important seems to be regarded as the most trifling. I cannot conceive why it is that such a strange pertinacity exists of withholding from the legislature the power of regulating the civil jurisdiction. Now, I think if there is anything in this that commends itself to my favor it was that view which seemed to strike at the public good by summary punishments on these petty offences where the offender often belongs to that vagabond population which will regard no law.

But this is all left to the legislature, and if they do not provide for it the public will be the sufferers.

MR. VAN WINKLE. I think the gentleman from Kanawha did not put on his spectacles. The view of the committee has been, in the first place, to make the criminal jurisdiction of these officers co-extensive with the county. Many of these breaches of the peace occur where there are large gatherings of the people drawn together for some object of interest. There may be justices of the peace and constables present, and I think it is highly proper that they should have the power to exercise their authority in the suppression of things of this kind wherever they be. Another reason is—and perhaps the most intelligent, that a great deal of this criminal jurisdiction is common law; and the legislature, very possibly, in defining the criminal powers of justices of the peace would use some large expression such as "has been formerly exercised by them." It would be almost impossible to codify, even by a legislature where they are allowed to use as many words as possible, the criminal law. And therefore the objection of the gentleman does not apply as between the two propositions. The civil jurisdiction is one that can be limited and regulated; the criminal jurisdiction is one that has been founded on a practice of our ancestors for centuries, and, like our common law, is supposed to be unwritten. I think, therefore, the gentleman may see that there is abundant reason for this discrimination.

MR. BROWN of Kanawha. I have been unable to see the distinction. I understand that actions of debt, detinue and trover are common-law actions that have been defined and have been known as common-law for a thousand years.

THE PRESIDENT. The question is on the adoption of all the sentence.

The question was put and the motion adopted.

MR. VAN WINKLE. I now, sir, move the adoption of the remainder of this section. The object is to do away entirely with the office of coroner. The functions of a coroner may be briefly described as relating in the first place to persons found dead and dying either from casualty or in an unknown manner. By some ancient provision of law, in case of the disability of the sheriff to act, the coroner was the party to serve the process on the sheriff. It has been used very extensively of late years when the sheriff

and his sureties were sued and where execution was issued against him. Of course, a sheriff could not serve a process on himself or collect an execution fee on himself. It has been a distinct office, has, I believe, been lately elected or appointed. There has been a distinct office of one or more in each county, and it is thought that the continuance of such office is useless. It is certainly useless in reference to the finding of dead bodies, because if there is but one in a county; and it is expensive for it is a great while before you can get him. The nearest justice of the peace can be called on to exercise all of the duties of the coroner in that respect. Now the question remains, what will you do with this process in which the sheriff has such disability he cannot serve it? Would it be proper in that case that his own deputies should act? My impression is that they are too much a part of the sheriff; their office a part of the sheriff's office, that they would not be the proper persons to execute the processes in such cases. It is therefore proposed that the boards of supervisors for each county would be better able to make the appointment of a person for this duty than the legislature would; that the legislature should designate one or more constables to serve process when the sheriff is under any disability. I had introduced here in the 11th line, and I will ask that it be considered as in the following: "When the sheriff thereof is a party defendant in a suit instituted therein or is under any other disability." There are certain other functions, I can hardly call to mind at the moment what they are, that have heretofore fallen to the coroner besides that of returning a verdict in the case of persons found dead. But the intention is that the board of supervisors shall designate one or more constables to perform these duties. It is very rarely that occasion for them arises; and it did not seem to the committee to be necessary that there should be a distinct officer for the performance of any of these functions. That is the virtual object of this new section. If it reaches the case, I hope it may be adopted by the Convention.

THE PRESIDENT. Does the gentleman indicate any amendment?

MR. VAN WINKLE. I ask by general consent that the words "or under any other disability" be admitted.

The admission of the words was accepted, and the question recurred on the remainder of the section.

MR. WILLEY. I understand the motion of the gentleman from Wood to be to adopt, with this modification which has been inserted

the whole remainder of this section from line 111 to the end. I really cannot see any necessity for the office of coroner at all, or for any body to act as such. It has always appeared to me to an unnecessary kind of investigation for nothing. I have no particular objection if the Convention see fit to retain it. I would just as willingly see nothing said about it whatever. I never knew it to amount to anything only the cost of the coroner and jury.

MR. STEVENSON of Wood. Mr. President, I think there ought to be an amendment in line 111 of this part of the section. I move to amend by striking out in that line the words "former office of". If we retain this expression, it would confine the justice of the peace who acts as coroner to the precise limits described in his limits which would govern the action of the old coroner, or the coroner under the law as it previously existed regulating that office. I would prefer leaving that matter, as many others have been left, with the legislature to change the duties to some extent which belonged to the person acting as coroner under the old law. If you ordain this phrase, that will be the state of the case. If you strike it out, then the justice will be required to perform whatever duties, either modified or added to, that were exercised by the coroner under the old law. I think it would be better in that respect. It would not cripple the office if it became a necessity at any time to change the duties of the person acting as coroner.

The motion was agreed to, and the question recurred on the remainder of the section.

MR. WILLEY. I move to strike out all from the word "every" in line 111 to "county" in line 114, inclusive; and also all after the word "therein."

The appointed hour having arrived, the Convention took a recess.

* * * * *

AFTERNOON SESSION.

The Convention re-assembled at the appointed hour.

THE PRESIDENT. When the Convention took a recess, the motion before it was to strike out the coroner, lines 111, 112, 113 and "county" in line 114.

MR. SMITH. I wish to sustain that proposition to strike out. I am myself unable to see at this day any necessity for a coroner. It is a very ancient English office. I believe we can trace it back in England as far as we can the sheriff. The extent of his jurisdiction is very much diminished, being originally an office of a good deal of reputation in its origin; afterwards became of rather less repute. Its principal object was to ascertain the deaths that occurred by violence. Now, in England, wherever a weapon of any sort was used so as to produce death it was in law a "deodan," and went to the king. If a wagon ran over a man's head and killed him, the wagon was forfeited to the king. If an offense on the person produced death, there was a forfeiture of the goods of the felon. If a man killed himself, he was denied Christian burial. He could not be buried in a graveyard where Christian men were buried, but was buried in cross-roads, and a stake driven through his body. When it became necessary in this early time to ascertain if there was a deodan forfeited to the crown, or whether there was a forfeiture of an estate of a party that had produced the death of another, or whether there was a suicide who was to be denied Christian burial, it was necessary to have some one who should have the legal authority to ascertain these things and carry out the forfeitures required by these ancient usages and laws. The office of coroner was instituted for this purpose. That was its jurisdiction. I believe originally they had jurisdiction of waste property carried off by water at flood-tide on the ocean; but that is all superceded in England, and these forfeitures have been superceded; but I believe even to this day a man who kills himself is not entitled to be buried in a Christian graveyard. I recollect some years ago where Lord Castlereagh cut his own throat and there was a great effort to conceal it. It was supposed they made him out a maniac and therefore defended him against the consequences of his own act. There was a good deal of excitement in relation to it when I was a boy.

But no doubt there is nothing of importance left for the coroner of today. We have no forfeitures to ascertain; we have no question of "deodan" to settle; no question of Christian burial; nothing of that sort. All that he does is to go and sit on the body of a dead man, and if he can to tell how he was killed and report it, and there is an end of it. What good results, what benefit, to the community? Why, sir, a magistrate can call a witness before him and examine and see the cause of the death or offense if there has been one. Every man in the community is in some sense a

conservator of the peace, for it is the political duty of every man in this country, where an offense is committed to investigate that offense and bring the offender to punishment. Well, now, cannot the magistrate do it just as well? I believe the coroner was in some respects also a conservator of the peace; the sheriff is, the constable is; the magistrate also is a conservator of the peace. He is required to inquire who killed the man, and that is the object of the coroner—the whole object; no other purpose in it. It will do very well for a man that likes to pick up a few pence as a lounger and do an easy work. He can when a man dies suddenly go out into the country and get up a jury and take them to the body and inquire over it. The fee is two or three dollars, and thus he makes a crust for himself. I believe there is no law for the case anywhere. I suppose the finding of an inquest would be equivolent to an affidavit against the party whom they may have charged with the offense. It might be taken up on report of the jury and tried—the person might. But these very men who are examined before the jury can be called in before the magistrate to prove the same thing. I suppose no inquisition can be had in this country where everything is not paid for. The constable, the witnesses, the jury, the coroner all have fees. I suppose no inquisition could be had for less than thirty dollars. We now claim to be establishing a government for economy. Economy is the order of the day; and here you are instituting an office utterly worthless in my opinion, which will be resorted to merely for the purpose of making a little money, taking it off the public and doing them no service. When the question came up it was ignored by the present Constitution of Virginia and no reference made to it. There is no provision made for it. There was a law, I believe, existing in the Code, which went into it as far back as July, 1850, in which there was some provision about the governor appointing a coroner but this Constitution was enacted after passage of that law some year or more after this Code was framed; and this constitution having ignored the office, it is a question whether it is repealed or a law. I have always been under the impression that there was no coroner in this state nor any authority to make a coroner, for the Constitution designates the county officers, and coroner is omitted. Now, I do not undertake to say this law was continued or that it was repealed. But I am strongly of the belief that the office does not exist, and cannot constitutionally exist at the present time under our existing Constitution.

MR. DERING. Suppose the sheriff should die?

MR. SMITH. You have said the board of supervisors shall make a sheriff to perform the duties when the sheriff is under disability.

MR. VAN WINKLE. That is proposed to be stricken out as well as the other.

MR. SMITH. Well, I do not think it ought to be stricken out. Why, a constable may execute the office of sheriff by law. He has the power of executing the office of sheriff. That office exists, and by making a coroner you multiply offices unnecessarily, and with every office you add to the government, you add expense. Now, I go for economy, too—a just and proper economy. I am for the economy where the office is useless. Now, I should like to hear from any one any reason there may be to create the office of coroner, or why a magistrate cannot act as coroner. Why cannot the magistrate call the witnesses that he expects to have before him and issue his warrant? We do not want to look at the body. We know it is dead. All that was valuable of it is extinct; it only wants a decent burial; and it matters not whether he was a Christian or had been guilty of any unchristian act or not. He is to be buried in a Christian graveyard. These things are no longer controlled by any barbarous law. Why should we continue an office that sprung up in a barbarous age to meet conditions that no longer exist? I see no necessity for the office, and I would therefore sustain the motion of the gentleman from Monongalia to strike that out.

MR. POMEROY. I do not know what the prevailing custom is in the state but we have a coroner in our county and we find it very inconvenient as at present regulated. He lives in one extreme part of the county. If a person is found dead along the banks of the river, which very frequently occurs, we have to go to the other extreme part of the county to get this coroner to attend, and it creates a great deal of delay. This provision of the committee was not to have a different officer at all but just let the magistrate act when any case of this kind occurs. What is to be done with one of these bodies that is perhaps a mile or two from any house? Who is to attend to the burial of it? If there is not some person authorized to go there and take sufficient help at least for the burial? Who is to see that this man is taken to a Christian graveyard?

MR. SMITH. In our county the overseers of the poor attend to all things of that sort. It is their duty to do so.

MR. POMEROY. We have never considered it in our county because we have a coroner; and we propose to give these duties to the justice. I cannot see how it will add to the number of officers. It diminishes the offices. It simply says the justices of the peace shall perform these duties, which may as well be left to the justices as to any other set of men. I have no idea the overseers of the poor do it with mere authority. I do not see but the cost would be as much in one case as in another.

MR. SMITH. The burial of a dead man, so far as I know, is no part of the jurisdiction of a coroner. His object is to ascertain how he came to his death, not to bury him. That devolves upon others; and although the coroner may bury the dead, it is an extra-judical act.

MR. VAN WINKLE. They always do it in our county.

MR. POMEROY. I always understood the duty of the coroner was to examine the dead man if there was funds sufficient to defray the expenses and gave all the information necessary and also attended to the burial before they left the ground—either attended to it themselves or took measures to have it attended to in a proper manner. Sometimes a man is drowned on this river, has funds sufficient to defray expenses and something over. He keeps that in his hands till called for; sometimes without any fees; then of course, the expense of his burial ought to be paid. I do not think the Convention ought to strike out.

MR. SMITH. There is one remark that I will make that I intended to make when I was up before. Not to be charged with making two speeches, I will call it an appendix to my speech. I have practised law forty years. I have been actively engaged in civil and criminal practice; and in that whole period I have never known an inquest of a jury brought into court, or any use whatever made by it in case of a coroner; and I think I may challenge the experience of the gentleman of the bar to attest the truth of what I say. I have asked several and there is no one has ever known of any use made of it or that it ever had any use other than to furnish snug little fees to a man who had nothing else to do but take some money out of the county treasury.

MR. WILLEY. I am not very particular about this office myself although I made the motion. I did it more from the fact I was desirous of getting rid of what seemed to be an unneccessary office. No, sir, the great tendency of modern times and of modern governments is the multiplication of little petty unnecessary offices. Multiply one after another, and they all have to be paid, until they breed in the body politic like the locust until every green thing in the commonwealth has been consumed by the multiplication of offices. I would say to the gentleman from Logan that in all my experience as a lawyer—not very extended, indeed—I have never seen a solitary instance in which the administration of public justice, criminal or civil, or the interests of the community in any shape or form were in the least degree benefited by the operation of this office of coroner. It is quite common to have three or four or five casualties a year; the coroner is called to sit on the dead bodies, as it is said, and he sometimes makes very amusing reports as to the means by which the deceased came to his death; and that is about the only benefit I ever knew to be derived from the office —some good jokes, some fine specimens of grammar and rhetoric in the coroners' reports circulated through the public prints. I have never known the development of any fact that was of any value to the community whatever within the range of my experience—which I acknowledge has not been very great. When a casualty does occur and the coroner makes an investigation, gets a jury to sit on the dead body, examines witnesses, calls a physician and reduces the matter to record and makes his report, the only result is an expense to the public of $20 to $30. This is paid and that is the end of it. It is true that there ought to be some means by which a body that is found without friends in a community should be taken into custody and Christian burial provided in a decent manner. But are we, a Christian community, driven to the necessity of establishing a constitutional officer in order that the bodies of unfortunate men in a Christian community may find some one that shall give him a decent burial? Sir, it is a reproach on our age and our Christianity that there should be any such necessity. Where will you find authority to do it? In every Christian man's bosom and heart, and arm if need be. But then, sir, it is proper that in all such cases if necessary to defray the expenses of Christian burial that an account should be made out and brought properly to the notice of the public and the proper expenses should be paid. I do not think it is necessary to create an additional office for any such purpose as that; and what other purpose will be

answered by the creation of it I have never been able to see. The main reason that induced me to offer this proposition was hostility to this growing evil of the multiplication of unnecessary petty offices in every county. We ought to avoid it. Let us show to the states around us that we have a little superior wisdom in our northwestern Virginia. Why lodge all this amazing amount of multiplied officers on the community, like a swarm of hungry flies preying on the life-blood of the body?

MR. VAN WINKLE. I think the joke on the gentleman from Monongalia is about as good as some of those he has derived from reports of the coroners. The committee have been actuated by a very sincere desire to get rid of the office of coroner; but now it appears that we created him and the Convention is advised to get rid of him. Our object was by placing those duties on existing officers to get rid of that as a separate office. I hope the gentleman from Monongalia will accept the suggestion of the gentleman from Logan and retain the words providing who shall execute process.

MR. WILLEY. I do not move to strike out any more than that.

MR. VAN WINKLE. Oh, I thought you moved to strike out all. It might very well be left to the legislature to appoint some one, to discharge those duties; but I do not think gentlemen have got hold of the right end of the office. One half of my life had been spent in large cities; and where, as the Irish magistrate said, sometimes every morning was the harbinger of some atrocity the night before dead bodies were found in the alleys or floating in the river. Now, all of a coroner's duties in reference to a body so found is not to bury it, although that may be a consequence, and is perhaps simply a custom that has grown up. I know that the coffin with us always goes along and it is paid for from the county treasury. Or if money is found, it is passed into the hands of some officer to meet the expense. The object is this, that the body shall not be put into the ground until an examination has been made of it; until the evidence furnished by the state of the body itself as to whether violence has been committed has been examined and recorded and such other evidence brought out as pertains to it. I do not know that it falls within the ordinary duties of justices of the peace until some complaint or allegation of a supposed murder has been laid before him to proceed in the business. It is true that an active magistrate hearing a body had been found, or cer-

tain persons were suspected of a murder, there would be enough to induce him to issue a warrant on application if he did not do it of his own accord. I understand it to be the object that no dead body found under such circumstances leading to the suspicion of violence shall be interred until it has been thoroughly examined. Generally a physician is present and the evidence is taken and the verdict of the jury pronounced as to whether there was violence or not. Then, of course, the body is put out of the way.

I believe the matter may as well perhaps be left to the legislature to impose the duties on some existing officer if they think proper. I was under the impression the office was still in existence. It seems the functions are still exercised, and it was with a view of neither increasing nor diminishing the number of officers that the committee introduced this section. The amendment proposing to strike out all that relates to coroner should not include the words "and to perform the other duties of the said former office."

MR. WILLEY. I never moved to interfere with it.

MR. VAN WINKLE. But the subsequent words I have quoted had better not come out.

MR. WILLEY. It will be so considered as my amendment.

The vote was taken and Mr. Willey's motion to strike out the coroner was agreed to; and on motion of Mr. Van Winkle the remainder of the section was adopted.

The Secretary reported the last section of the report as follows:

"9. No county hereafter erected shall have an area of less than four hundred and fifty square miles, and no county shall be reduced to less than the same area, or its white population to a number less than four thousand, by taking territory therefrom to form a new county. The board of supervisors may alter the bounds of a township of their county, or erect new townships therein, with the consent of a majority of the votes of each township interested, assembled in stated township meeting, or in a meeting duly called for the purpose; but the area of no township shall be thereby reduced below the limit mentioned in the first section of this article, unless the number of the white population remaining therein shall exceed one thousand."

MR. VAN WINKLE. The first sentence of this section has already been acted on in connection with the legislative report. The Convention will remember I stated then, or it was stated, that there was a similar provision in this report, but the Convention went on and acted on it; and this, therefore, I think, we necessarily pass by. It is already enacted.

I ask to pass it by, I rather wanted to bring it to the notice of the Convention. When the remaining part of it was before read by the Clerk in consequence of the alterations made in the first section, an alteration becomes necessary in the language at the close of this section. Commencing with the 128th line, strike out all that follows and insert "subject to the provisions of the 1st section of this article." It will then read:

"The board of supervisors may alter the bounds of a township of their county, or erect new townships therein, with the consent of a majority of the votes of each township interested assembled in stated township meeting, or in a meeting duly called for the purpose, subject to the provisions of the first section of this article."

I suppose that will be accepted as an amendment by the committee. Then the question will recur on the adoption of the section as modified.

There being no objection this modification was accepted, and the question recurred on the section as modified; and the second sentence, as amended, was adopted.

MR. VAN WINKLE. Before taking the vote on the whole, I now move that it may be simply passed by in order that an additional section, including the provision in reference to incorporated cities and towns can be offered. I therefore ask that instead of being recommitted the report be laid aside for the present.

MR. HALL of Marion. I would beg to ask a question before the motion is put. As mentioned by the gentleman from Wood, we in another report passed on the question of the formation of new counties—the legislative report, I believe—which is the subject of the first sentence of the 9th section.

THE PRESIDENT. That has not been acted on here, and the object is to pass it by for the present.

MR. HALL of Marion. I wish whenever it may be in order to propose an amendment to the provision whether here or elsewhere.

It occurred to me where we come upon it in this report it would be competent to introduce any modification or amendment which I should propose, which if inconconsistent with the provision adopted in the legislative report would be arranged by the Committee on Revision.

MR. VAN WINKLE. The legislative report was only postponed temporarily; a new report has come in and it will be taken up again and then the gentleman will have his opportunity there.

MR. HALL of Marion. I desired before it was finally disposed of to be permitted to submit a modification and an opportunity to be heard upon it. It is suggested that it would be more pertinent to act on that matter on the report on the legislative department, and therefore I will not press it now.

The postponement of further consideration of the report on county organization was agreed to.

MR. BATTELLE. I desire, Mr. President, in behalf of the committee, to submit the first report of the Committee on Education, with request that it be laid on the table and printed.

Following is the report as presented:

FIRST REPORT OF THE COMMITTEE ON EDUCATION.

The Committee on Education respectfully recommend that the following provisions be inserted in the Constitution:

G. Battelle, Chairman.

"1. All money, being the proceeds of forfeited, waste and unappropriated lands; all grants, devises or bequests that may be made to this State for the purposes of education, or where the purpose of such grants, devises or bequests are not specified; the revenues accruing from any stock owned by this State in any bank or other corporation, or the proceeds of the sale of such stock; any sums due this State from any other state on account of educational purposes; the proceeds of the estates of all deceased persons that may have died without leaving a will or heir; the proceeds of any taxes that are now, or that may hereafter be, levied on the property or revenues of any corporation; and all monies that may be paid as an equivalent for exemption from military duty, shall be set apart as a separate fund, to be called the School Fund, and invested under such regulations as may be prescribed by law, in the interest bearing securities of the United States, or of this State; and the annual increase thereof shall be sacredly devoted and appiled to the support of free schools throughout the State, and to no other purpose whatever. But any portion of said increase remain-

ing unexpended at the close of a fiscal year, shall be added to, and remain a part of, the capital of the School fund.

"2. The legislature shall provide, by all suitable means, for the establishment, within three years from the adoption of this Constitution, of a thorough and efficient system of free schools. They shall annually appropriate for the support of such schools the increase from the invested school fund; the clear proceeds of all forfeitures, recoveries, confiscations, and fines accruing to this State under the laws thereof, not less than one-half of the amount derived from the State capitation tax, and such an additional sum derived from taxation on property as shall, with the sums raised for school purposes in the several townships, cities and towns, by the proper authorities thereof, be sufficient to provide primary instruction in free schools, during at least three months in each year, to the children, between the ages of six and twenty-one years, of all the citizens of this State.

"3. Provision shall be made by law for distributing the money annually appropriated by the legislature for the support of schools, among the several counties, in proportion to their respective numbers of white population; and for distributing the amount so received by each county, among the several townships, cities and towns thereof, in proportion to the sums of money levied by each for free school purposes. But no part of the money appropriated by the legislature for the support of free schools shall be used for the erection or repair of school houses.

"4. Each township, city and town shall be required by law to raise annually, by tax on persons and property, for the support of free schools therein, a sum not less than one-half the amount received by such township, city or town respectively, for school purposes, from the annual appropriation by the legislature, a part or the whole of which tax may be applied to the erection and repair of school houses. Any township, city or town failing to raise such annual tax, or any school district failing to maintain a free school therein during at least three months in each year, shall receive no part of the school appropriation from the State for the year during which such failure occurs.

"5. Provision shall be made by law for the election, powers, duties and compensation of a general superintendent of free schools for the State, whose term of office shall be the same as that of the governor; and for a county superintendent for each county, and for the election, in the several townships, by the people, of such officers, not specified in the Constitution, as may be necessary to carry out the objects of this article; and for the organization, whenever it may be deemed expedient to do so, of a State Board of Public Instruction.

"6. The legislature shall foster and encourage moral, intellectual, scientific and agricultural improvement; they shall make suit-

able provision for the establishment and maintenance of institutes for the blind, mute and insane; and whenever it may be practicable to do so, for the organization of such other institutions of learning as the best interests of general education in the State may demand."

MR. BATTELLE. I would state just this, that the report, I believe, embodies the matured sentiments of the committee except in so far as it may need some mere verbal changes, or any changes in principle, which may be rendered necessary by the action of the Convention on other reports, and more especially in the Report on County Organization.

MR. BROWN of Preston. I move the Convention take up the third report of the legislative committee.

MR. VAN WINKLE. I would suggest that some other report be taken up. This second report in printed form was only handed in to us this morning. I have been so engaged I have not had time to examine it. I presume the only question remaining is the apportionment. If it would be the pleasure of the Convention to take up, for instance, the report of the Committee on the Executive, or that on the Judiciary, it would give us a little time to look a little further into this apportionment. There is a report of the Committee on Taxation. It is a short one. The executive report could soon be disposed of.

MR. BROWN of Preston. I certainly do not desire to press this report on the Convention; and in view of the fact that the gentleman has not examined it, I withdraw the motion.

THE PRESIDENT. The Chair would suggest that the chairman of the judiciary committee is here and is not likely to stay with us very long. His report might be taken up as a matter of courtesy.

MR. WILLEY. I believe the acting chairman of the committee it not here.

MR. VAN WINKLE. I would suggest that the gentleman from Kanawha who is the acting chairman, has resigned his seat in the legislature to take a vacation on the 24th, and the courtesy which we intended to show to the gentleman from Monongalia will be in fact as he intends to leave in the morning; and the courtesy could not be shown the gentleman from Kanawha if we could defer it until the 24th when he could be here. I would ask, then, if the members of the executive committee are present. I believe the chairman is absent, if there would be any objection to taking up

that report. Probably we could finish that by the 24th when the gentleman from Kanawha would be at liberty. I apprehend the gentleman from Marshall must be detained by the water.

MR. STEVENSON of Wood. I would state as a member of the executive committee that I have, of course, no objections myself, though I believe I would prefer if the chairman of the committee were present. Why not take up the report of the Committee on Finance and Taxation?

MR. PAXTON. In regard to that report, I believe it stands sixth in order, and there was no expectation on my part and I suppose not by the committee generally that it would come up at this time. I have not considered it at all for several days in view of the probability that it would not come up for a week. I should prefer, therefore, that that report should not come up.

MR. HALL of Marion. Is there a motion to take up any particular report? I move we now take up the report of the judiciary committee. I desire very much to have the benefit of the counsel of the gentleman from Monongalia as long as we can.

The motion was agreed to and the judiciary report taken up.

MR. WILLEY. I had the honor and pleasure of acting with this committee until I left for Washington, at which time we had progressed so far with our report that it was completed with the exception of arranging the circuits. The boundaries of the State had not then, or until about that time, been definitely determined upon. I have not had time since my return to look into the arrangement of these circuits. I do not know that they would satisfy my views of what would be proper exactly.

MR. VAN WINKLE. With permission of the gentleman, I will move that part which relates to circuits be passed by for the present. I think every gentleman would desire to know what these circuits are.

MR. WILLEY. I move to take up for consideration so much of the first section as has reference to the number and character of the courts.

MR. VAN WINKLE. The discussion by sentences has promoted the business of the Convention. I would suggest we pursue the same course in reference to the judiciary.

The Secretary reported section 1 as follows:

"1. There shall be a Supreme Court of Appeals and circuit courts. The jurisdiction of these courts, and of the judges, thereof, except so far as the same is conferred by this Constitution, shall be prescribed by law."

MR. WILLEY. I move the adoption of the first sentence.

MR. LAMB. I would like an explanation of the operation of this first sentence. Is it intended that the judiciary of the State shall be confined to the courts which are named here? Will the legislature have authority to establish other courts of inferior jurisdiction? Is this provision to cover the establishment of a probate court or court of any kind within the city of Wheeling; or is the legislature to be confined to the two kinds of courts mentioned here?

MR. WILLEY. The design of the committee was that these should be all the courts.

I have nothing to say in regard to this first sentence. It submits a distinct proposition where the whole judicial power, so far as courts are concerned shall be vested in a Supreme Court of Appeals and circuit courts. The idea is to dispense wholly with the county courts and every other sort of court in the true sense of the term except the Supreme Court of Appeals and circuit courts.

MR. LAMB. If the judiciary committee will compare the language that was adopted here with that which exists in other states, they will find it does not express perhaps what they intended. In almost every state the provision is that the judicial power of the state shall be vested in certain courts, which are designated. Where that form of expression is used there can be no doubt about the construction of it. But a different form is adopted here which simply prescribes that two certain courts shall be created. It would seem to me that this leaves it within the power of the legislature to create other courts. If the legislature provide for a Supreme Court of Appeals and for circuit courts as they are here designated, the provision of this Constitution is fully complied with. They may go on under their general legislative power and establish other courts. The article 6 adopted here is derived from the present Constitution of the State of Virginia. I had always supposed that the difference of expression between that constitution and the constitutions of other states, and the Constitution of the United States, was

adopted for the express purpose of having a different construction. Where the constitutions prescribed that the power should be vested, it necessarily carried with it the construction that no courts could be created but those there named. A different phraseology was adopted here for the purpose of bearing a different construction. Such would give to the article as it stands now—that it would not prevent the legislature from establishing other courts. Full obedience on the part of the legislature to that clause would require them to establish the supreme court and circuit courts; and it would be no violation of the clause if they established other courts, and the full legislative power with which we have vested them would authorize them to do so. Nor do I think it would be improper to vest this authority in the legislature. It may become actually necessary; it certainly will be proper in certain stages of the case that a special court may be established for a special district; as, for instance, a special criminal court for the city of Wheeling; and I think the legislature ought to retain that power. Whether the committee have considered that matter in this view or not I do not know. The inquiry is made for the purpose of ascertaining. Construing the sentence as I do, I am satisfied with it as it stands.

MR. WILLEY. So far, Mr. President, as the alterations are concerned, the difficulty of the gentleman from Ohio may be provided for by the operation of the provision similar to that existing in our present Constitution. It is there provided that the general assembly may vest such jurisdiction as shall be deemed necessary in corporation courts and in the magistrates who may belong to the corporate body. Some provision of that kind may be added; but it seemed to the committee that the jurisdiction might clothe the circuit courts, might clothe the corporate courts. They are designed to be covered by any judiciary bill, which would embrace cities within the circuits. The general jurisdiction properly belonging to the courts might be exercised by the judges of the circuit courts. My recollection is that the committee designed that there should be no other courts but the Supreme Court of Appeals and the circuit courts, and they followed the language of our existing Constitution precisely, leaving out the intermediate court of appeals for which we thought there was no necessity in this small State.

MR. LAMB. What clauses of the Constitution do you refer to?

MR. WILLEY. I refer to the very first clause of the judiciary

department. I refer to art. 6 under the head of "Judiciary Department."

MR. LAMB. The clause that ought to authorize the legislature to establish corporation courts.

MR. WILLEY. It is the language of the Constitution entirely, under the head "Of Corporation Courts and Officers."

MR. LAMB. Oh, yes.

MR. WILLEY. We have no sort of objection if it suits the taste or wishes of the gentleman to make it more certain. I think it is sufficiently certain now. By using "The judicial power of the commonwealth shall be vested in a Supreme Court of Appeals and circuit courts" that would exclude corporation courts.

MR. LAMB. I want the legislature to have that power if it should be found necessary.

MR. WILLEY. Then you would have to make a special reservation, an exception.

MR. LAMB. Yes.

Would the chairman of the committee have any objection to adding at the end of the section the words; in the present Constitution, "The legislature may vest such jurisdiction as shall be deemed necessary in corporation courts?"

MR. WILLEY. Not in the least, sir, so far as I am individually concerned.

MR. VAN WINKLE. That is only bringing the county courts into existance again, to which I have decided objection. If the gentleman wants Wheeling provided for, let him offer an amendment making an exception in favor of Wheeling. I take it there may be a necessity in order to relieve the circuit, of establishing a separate criminal court; but I am not willing to leave the whole thing open to the legislature to establish what corporation courts they please. Just as sure as can be, we will have the county court, county pleas, or some other name. The proper way would be to offer such an amendment as he wishes.

MR. LAMB. Has the gentleman observed what the amendment was—what the suggestion was? Or, in his terror and apprehension in regard to the danger of bringing back county courts, does

he not entirely misread in regard to the character of the suggestion? It was nothing more than to allow the legislature to establish corporation courts. Now, how a clause of that kind could by any possibility lead to bringing back the county courts, I do not know. "Corporations courts."—The words have a different meaning. They do not include county courts. So far as the provision would have any effect at all, it would be to render more forcible the exclusion of county courts. I think the gentleman need not be at all apprehensive of county courts being brought back under those terms. I did not intend to include the balance of this clause in the present Constitution under which county courts might be brought in; but I thought I had suggested it in such a way as to exclude any provision of that sort. I am not favorable to county courts. I do not want, at least by an evasion, to get them back. If I wanted to have county courts, I would put authority and provision so plain that it could not be mistaken. I would propose an amendment, but I understand the chairman of the committee would have no objection at all to the proposition, and it might therefore be considered as incorporated in the original report.

MR. VAN WINKLE. I object, sir.

MR. LAMB. Then I shall move the amendment as a matter of course.

MR. SMITH. I would suggest to the gentleman whether it might not be better to reserve that amendment to the close and adopt it at the end of the judiciary provisions. Unless this Constitution is to prohibit the legislature from making corporation courts. I am decidedly in favor of it. The gentleman says there is but one place where a corporation court is needed—this city. I think Parkersburg is aspiring to that position.

MR. VAN WINKLE. Not yet, under the law.

MR. SMITH. She is advancing towards it and I hope will rise to the dignity of a city after a while; and I think if our new State progresses as I hope it may do, I expect not long hence to my own town called the city of Charleston, and I suppose almost every man in the Convention may hope that at some future day circumstances may arise to make his town a city. Braxton being the central part of the State, Braxton may be the seat of government; and if it is made the seat of government, what is to hinder Braxton from being a city? Every gentleman ought to provide for a cor-

poration. I think Braxton bids fairer perhaps than almost every other section of the State to be the seat of government. You may say there will be a great many hills to cross to get to it. We will have to cut down the hills. That is the way to make the State.

Therefore, for these reasons, I would deny the fact that Wheeling now is or may hereafter be the only city in the State for all time to come, and I think the same may be said very justly of the town of Parkersburg. It is now on the very verge of a city and in a few years more it will become a city.

MR. VAN WINKLE. The law requires it should have five thousand inhabitants and it has got three. I did not intend to accuse the gentleman from Ohio of any evasion, but when he talked of introducing the very term "corporation courts" which I think are only a very great aggravation of the county courts, I must object if there is to be anything of that kind? And I suggest again, and hope he will concur in the suggestion, that some special provision be introduced here to meet the case of these large towns and cities. If you are going to throw this open to the legislature to appoint courts of inferior jurisdiction, you will do the very thing I wish to prevent. You might say the legislature may authorize a criminal court within any incorporated town or city; but when you just say a "corporation court" may be established, then you are proposing to establish what I object to. If the amendment was framed and before us so we could know precisely what the language is, I might find it less objectionable than I suppose; but when I am referred to the old term as found in the language of our present Constitution, proposing this nuisance of corporation courts as they exist in the eastern cities, the greater my wish to see my town grow to the dignity of a city the more I should wish such a provision out of the Constitution. I hope the substance of the amendment as the gentleman from Logan suggests, to come in wherever it would be proper, providing for such cases of a dense population, that they may have the extra courts if they need them, may be offered, and I will cheerfully vote for it. But I do not want the county court or the corporation court anyhow you can fix it.

MR. LAMB. I have no objection at all that the matter should take the shape suggested. I have no particular fancy for the terms "corporation courts"; though I think the gentleman's speech in relation to the matter is calculated to give a very erroneous idea of the meaning of these terms. The matter may lie, and a special

provision may be inserted in some portion of the judiciary report. I want the legislature to have the privilege if they find it necessary to establish special courts in large places or abolish county courts. For that reason this may become more necessary. As they are abolished the whole judicial burden is imposed on one judge of a large district. Our district is proposed to be made unusually large, and in proportion to its population the amount of business would be large, even greater than in proportion to its population and it may become absolutely necessary in order to prevent the denial of justice or such delays as are equivalent to it that there should be authority to establish here at least a special court.

I will withdraw the matter for the present.

MR. WILLEY. I understand the gentleman from Ohio has such an amendment, and that the clause, independent of the matter of corporation courts strikes him as proper. If necessary to reconcile the gentleman from Wood, change the phraseology of the clause, sir. The clause is derived from our present constitution. It was suggested that it be made to read: "The judicial power of the State shall be vested, etc.," That would be better perhaps. It would exclude the idea of the creation of other courts more thoroughly. I submit it to the other members of the committee whether it would not be better.

MR. LAMB. Well, I would ask the gentleman to add to it: "And such inferior courts as may be herein authorized." That clause is necessarily now an exclusion of all other courts.

MR. SMITH. The power is given to the legislature to confer the jurisdiction—that is all the jurisdiction they have—and there is nothing therefore to prohibit the State from making others; but the exception made in behalf of the corporation courts would limit the power here. I do not think there is any necessity for the words. That would be only a limitation on this power, which is a general one; but the clause spoken of at the close would be a limitation then on this power. The legislature may have power to do it so far as not prohibited by the Constitution.

MR. BROWN of Kanawha. It seems to me if the suggestion of the gentleman from Monongalia be adopted, that the judicial power of the State by the Constitution is to be conferred on the court of appeals and circuit courts, then the legislature will have no power to confer any jurisdiction. Now, I apprehend judicial power

must come from some quarter; and it must either come from the people directly by virtue of a provision in the Constitution or by the legislature in form of an enactment of law. This proposes in the Constitution to establish courts but without any jurisdiction at all and they could exercise none if not conferred by law. If it is attempted to confer the judicial power on these courts—on any courts—in the Constitution then it becomes a very serious consideration on the part of this Convention that in the distribution of that power you do it rightly, because it cannot be altered afterwards.

MR. WILLEY. The gentleman will not understand me as desiring at all to interfere with the other clause of the section, which provides that the jurisdiction, except so far as conferred by this Constitution, is to be prescribed by law.

MR. BROWN of Kanawha. The difficulty that has been in my mind all along is that we have been attempting in the report of the Committee on County Organization to confer in the Constitution a portion of the power and debarring the legislature from exercising the power it legitimately has to distribute the judicial power among the several courts that is given by the Constitution.

MR. WILLEY. I seem to be misapprehended. I only thought the suggestion as to the modification of the first sentence was proper to be considered—was forcible and worthy of being considered—because it would make these the only two courts that we establish by the Constitution, and that the legislature would have no authority to establish any other courts; not that it would embarrass the legislature at all in conferring on these courts whatever jurisdiction they might see proper, leaving the legislature full authority to do it. But I supposed the modification of the language would better define the purposes of this Convention that there should be no other courts but these two, leaving the legislature whole authority to prescribe their jurisdiction at all times as they might see proper. I am satisfied with it.

MR. VAN WINKLE. I am not satisfied with the language as it stands. I want to offer this amendment as a substitute for this first clause. "The judicial power of the State shall be vested in a supreme court, circuit courts and such other inferior tribunals as are herein authorized."

MR. WILLEY. I have no kind of objection to that, except say "Supreme Court of Appeals."

MR. VAN WINKLE. Why, sir? I have no objection, of course.

MR. WILLEY. It designates it.

MR. VAN WINKLE. I believe they are generally called "Supreme Court of Appeals" throughout the Union. I have no objection to that name.

MR. BROWN of Kanawha. The circuit court is to be a court of appeals.

MR. WILLEY. I understand the gentleman has no objection.

MR. VAN WINKLE. No, sir; I am not at all tenacious, although I would prefer that. Some gentleman can make the motion.

MR. HERVEY. I move to insert the words "of Appeals."

The motion was agreed to.

The question recurred on the motion of Mr. Van Winkle. It was reported by the Secretary:

Strike out the first clause and substitute: "The judical power of the State shall be vested in a Supreme Court of Appeals, circuit courts and such other inferior tribunals as are herein authorized."

MR. SOPER. "Or may hereafter be established" (Laughter).

MR. VAN WINKLE. That is exactly what I wish to avoid. It is throwing it back into the hands of the legislature.

MR. HERVEY. I hope the sense of the Convention will be tested on that proposition.

MR.. VAN WINKLE. You can test it by voting my amendment down.

MR. SOPER. I want to give the power to the legislature if it should be necessary hereafter to have the authority to create inferior courts whether they be probate courts or whether they be police courts or courts established for criminal purposes.

MR. WILLEY. Or county courts?

MR. SOPER. I care nothing about county courts.

MR. VAN WINKLE. I do.

MR. SOPER. I feel confident that they ought to have that power and it will very shortly have to be exercised in the cities. I would

like to have the authority here and then try this system of circuit courts exclusively and let us see, in three, or four or five years whether we can go on properly under them or if it should be found necessary to make an alteration I should like to have the power contained in the Constitution; and should like to give the legislature the power.

MR. VAN WINKLE. I hope the gentleman will put some clause to it that we shall not have fourteen courts in one county in a year.

MR. WILLEY. I hardly suppose the Convention will entertain the motion. It is a cat-in-the-meal-tub. It is old Monsieur Tonson back again. It is the everlasting county courts (Laughter) making its play in some shape or form. But I think we established a principle yesterday and today that the legislature should have no right to interfere with the justices at all in their courts. Now, sir, if justices of the peace in the country shall not be interfered with by the legislature; if unbending constitutional provisions shall secure the justices of the peace in their little townships, do let the circuit courts and court of appeals have some chance for their rights (Laughter). Why is it we are to throw round the guaranties of constitutional security beyond the or modification by the legislature around justices of the peace in trial of their cases and leave the courts to the constant attacks and mutations of the legislature at all times and under all circumstances? Why, sir, if there is any principle the people of West Virginia desire more than another it is that this Convention shall fix some constitutional barrier whereby the infliction of county courts shall be forever prohibited. If the motion of the gentleman from Tyler prevails, you place it perfectly within the power of the legislature the first time it meets to reorganize the county courts all over West Virginia.

MR. SOPER. I disclaim having any view to the county courts. But let me place this proposition fairly before this Convention. Suppose the fact to be that you put this system into operation. The people from all parts of your State call for the reorganization of the county court. Are we to tie them up and prohibit them from having it? If gentlemen mean that, we know precisely what to report to the community at large. Now, sir, it is not that class of courts that I have reference to. Before saying a few words in behalf of the proposition I submit here, I would say that my understanding of the provisions of this Constitution in relation to the organization of justices' courts appears to be entirely different from

those of the gentleman. I believe the legislature has got the whole control and direction of what way and manner the justices' courts shall exercise their jurisdiction. The legislature has a right to say that the circuit courts here shall have jurisdiction of all claims from ten dollars up, or any amount you please, and there has nothing been done in the organization of the justices' courts that will prohibit it. All it would amount to would be this: as to the amount fixed the jurisdiction would be concurrent in the two courts so far as they go, the one limited to one hundred dollars, the other unlimited below one hundred dollars. If we confer jurisdiction on the circuit courts why it would be concurrent with that of the justices' courts. I apprehend there is nothing yet taken place that would prohibit that; and I believe the legislature would have the right to say under what writ of actions they should exercise their jurisdiction. They might confine it to promissory notes, to litigated cases, if they wish. The whole matter rests with the legislature. I would have been willing myself to have trusted it at all times. I apprehend the object of the legislature will be to afford the cheapest and most expeditious mode of administering justice that their wisdom can devise. Now, sir, what I fear in the organization of these circuit courts is more particularly in the first place than of criminal cases and cases which generally come within the jurisdiction of probate courts may be retained in these circuit courts, and but once in three months; that the community may experience inconveniences, and there may be requiring immediate action under certain circumstances and yet no provision of courts to meet the requirement. I am afraid difficulties of that kind may arise; and if it should arise, then I want whenever they are found to exist that an application may be made to the legislature and the remedy may be supplied. That is what I am trying now to guard against. I see no reason why it should not be left to the discretion of the legislature to establish such courts of inferior jurisdiction without naming them as they might hereafter from time to time see fit to do.

I hope, sir, this Convention will think of this matter and come to the conclusion whether or not we would act discreetly if we should leave in our Constitution a power of that kind. I had supposed by reading this report of the judiciary committee that if we adopted it yesterday the legislature would under their general power have the right although it was not expressly given to them here. But if we are to have it so read that there shall be no other courts than those already established that I apprehend precludes the power on the part of the legislature to grant the relief if it

should be necessary; and it is, sir, with that view that hereafter the new system put into operation cannot meet the wants of the people, and in case such an emergency should arise then I want the people to have an opportunity of calling upon the legislature and getting such courts as they think their interests require. But as I have just remarked, they may be courts of probate or courts to try small misdemeanors. For instance, my friend, the chairman, the gentleman from Wood, spoke of the exercise of criminal jurisdiction by justices; he spoke of confining it to fines of five dollars and some few days imprisonment. Now, sir, our legislature would never be willing to limit the fine for assault and battery to five dollars, or petty larceny, or some actions of trespass or things of that kind. I submit it is rather degrading to the character of our circuit courts and the respect that we attach to the judges who preside over those courts to have them sitting day after day in our courts for the hearing and trial of assaults and batteries. It ought not to be that. And as your cities and towns grow and the people progress throughout the country, we are to expect that that class of cases will increase and rather than take up the time of the circuit court in trying these trivial affairs, I would have a police court and some court with criminal jurisdiction within the county where the whole matter could be speedily disposed of and at a very small expense without interfering with the important business that would inevitably go into those circuit courts. It is to reserve a power to the legislature to establish these inferior courts that I have proposed the amendment just suggested.

MR. HAGAR. The only gauge we can arrive at in reference to the future is the operation of the past. The present must judge from the past. I think the four circuits, a monthly court in every district of the county and then the supreme court will be about as much as the people want. They are tired of so much court until they get more money and be better able to law more. I am against the amendment.

MR. VAN WINKLE. I think the answer to the gentleman from Tyler is simply that if the necessity for probate courts, or police courts or for any other of those courts should arise or is thought to have arisen, it is easy to submit that question to the people under the provision for amendment submitted by the gentleman from Ohio. It would be a definite question and one of those that would be very easily submitted to the people and let them choose. Like the gentleman from Monongalia, I am just as particular here as

I am about justices of the peace. I should like to have these things which are certainly fundamental prescribed in the Constitution, leaving the legislature to act on this matter within limits that shall be stated. But that in reference to things that are fundamental the Constitution should express it. I, of course, would be opposed to the amendment of the gentleman from Tyler, which would in effect destroy my amendment.

MR. BROWN of Kanawha. I feel bound to sustain the amendment of the gentleman from Tyler, and I have been unable to see "the cat-in-the-meal-tub," or "raw-head-and-bloody-bones," or any other frightful monsters that gentlemen are alarmed at. I have advocated one set of courts in the State to transact the business of that whole judiciary except what is conferred on the justices of the peace; one tribunal and four circuits in each circuit for the year, as is proposed. Now, with what little experience I have I must confess if there is one difficulty in my mind it will be that these circuits will be found incompetent and unable to discharge the duties imposed on them; that the difficulty will be that the dockets will be crowded worse than they are already. The reservation in the Constitution of the right of the legislature to establish inferior courts when the necessity arises, to relieve the other courts as occasion may make necessary is surely no hazard. When the representatives of the people have the power in their own hands—their own legislature—I am unable to see where the legislature is. Gentlemen seem to apprehend that the legislature are some set of foreigners who will certainly take the first opportunity to take away the rights of the people and all the powers conferred by the Constitution on the other tribunals. I do not so understand it. It can have no other motive than to discharge the duties and legislate for the interests of the county of which they are the representatives, and emphatically more so than we are. A necessity arises and looking to the necessity of having power in the legislature to institute intermediate courts, the committee have provided in one of these sections—section 9—"A special court of appeals, to consist of three judges, may be formed of the judges of the Supreme Court of Appeals and of the circuit courts, or any of them, to try any case or cases which may come before the Supreme Court of Appeals in respect to which any of the judges of said court may be so situated as to make it improper for him to sit on the hearing thereof." This provision is also now in the Constitution of Virginia. Here is a provision to meet any contingency that may arise

under ordinary circumstances with the expectation that everything works exactly as we expect. But it is not to be supposed we can apprehend beforehand all things that may arise. It is wise to preserve in the Constitution provisions allowing the legislature to meet any deficiencies that may be found hereafter to exist. There can be no danger in it. I think the amendment of the gentleman from Tyler is wise and conservative. It is to meet a contingency that may never happen; but we should be controlled by the presumption that if the occasion should arise, the legislature will be intelligent enough to meet the occasion as their duty requires.

MR. WILLEY. The argument of the gentleman from Kanawha is that it may turn out that the dockets of these circuit courts will be so burdened the judges will not be able to discharge the business. That is the point of the gentleman's argument, and upon that he bases his plea for the necessity of vesting authority in the legislature to establish inferior or other tribunals in order that the business of the country may be accomplished. Now, sir, the great object we had in this report was to place the judicial business of the country in competent hands; and in order that any difficulty such as that my friend has suggested might be obviated if it did, we have a section reported here as follows:

"3. The legislature may from time to time re-arrange the said circuits; and after the expiration of five years from the time when this Constitution shall go into operation and thereafter at periods of ten years, may increase or diminish the number of circuits or the number of courts in a year, as necessity may require."

Now, there is a complete provision to meet the contingency on which my friend from Kanawha bases his plea for authority in the legislature to create additional courts when necessity should indicate it. We have the provision there—not inferior tribunals but circuit courts competent to discharge the business; multiply them if the business requires it, or decrease them, at intervals of certain times. I think the answer to the gentleman is in the report itself.

MR. LAMB. This amendment contemplates, I take it, and so far it meets the general concurrence that some provisions should be inserted in the subsequent part of this article authorizing the legislature to establish such other inferior tribunals as may be found necessary to transact properly the judicial business. With this understanding of it, I am disposed to vote for the motion as it stands, supposing that an explicit provision will be contained in some other part of this article defining what these courts are which

the legislature is to be authorized to establish, and that that provision will be an adequate one to insure the proper transaction of the business wherever too much business may be found to have developed in the circuit courts. With a provision of that kind, I think we can adopt it without the amendment of the gentleman from Tyler. Without such a provision to be carried into effect in good faith I should be in favor of the amendment of the gentleman from Tyler. But I would prefer that the tribunals which are to be established should be specified in the Constitution. The other would leave unlimited authority to the legislature; and the first legislature that was disposed could certainly reconstitute the county courts.

The question was taken on Mr. Soper's amendment and it was lost.

The question recurred on Mr. Van Winkle's amendment to strike out the first clause and insert: "The judicial power of the State shall be vested in a Supreme Court of Appeals, circuit courts and such other inferior tribunals as are herein authorized."

The amendment was agreed to, and the question recurred on the second sentence: "The jurisdiction of these courts, and of the judges thereof, except so far as the same is conferred by this Constitution, shall be prescribed by law."

This second sentence was adopted as read.

Section 2, by general consent was passed by for the present, and section 3 taken up and reported as follows:

"3. The legislature may, from time to time, re-arrange the said circuits; and after the expiration of five years from the time when this Constitution shall go into operation, and thereafter at periods of ten years, may increase or diminish the number of circuits or the number of courts in a year, as necessity may require."

MR. VAN WINKLE. I would like to ask the chairman of the committee whether this had better not take the course of all similar provisions yet acted on or proposed, to follow the United States census in some way. Make the first change, say in 1871, or so to arrange that the first change should be permitted at an earlier day, and that those which follow may be made after the following census. A proposition was made in the course of the legislative report to provide for taking a state census but it was negatived; and what was contained in the legislative report of a similar character was

made to depend on the United States census. My impression is we will have no guide in re-arranging circuits except after we get a new census. I suggest for the consideration of the gentlemen of the committee to make such alteration as they think desirable.

MR. WILLEY. It will occur to my friend from Wood at once that population would be by no means a very correct guide to the jurisdiction of the judges in the State. It is very often the case that in large and populous counties there is very little litigation, whereas in small counties, much less population, it frequently happens that there is much more litigation and often times of a tedious and difficult character. The matter of arranging the State in circuits the first time will be after all a matter of experiment. We will have to try it a little while to see where the great amount of business will be; and hence the committee very properly determined we ought to provide a time as soon as possible after the Constitution goes into effect when there might be a rearrangement of circuits when it would have been ascertained by actual experience the amount of business in the several counties, so as to make a proper adjustment amongst the various judges. I fear if we wait till 1871 we might become involved in some difficulties. In fact, if it should turn out that however careful we may be in the adjustment of these circuits we will have given to some judges more business than others—perhaps given to the same degree not only more than their share but more than they can do. It is a matter not material at all; it involves no principle; it is one of expediency entirely; and I throw out these suggestions on the question of expediency, whether at least the first arrangement should not be within a tolerably short period after this matter goes into effect.

MR. VAN WINKLE. I should think, sir, while I admit there will be some difference of business, but I apprehend after all population will be found as good a guide to the business to be done as any other you can arrive at.

MR. WILLEY. Before the gentleman replies, I will add that in part of these counties where there is very little population there is a kind of litigation that is exceedingly tedious; for instance, land litigation. Two or three land suits will perhaps take as long to determine as the whole docket in the city of Wheeling. I believe my friend there (Mr. Smith) gives an account of a land suit pending some twenty-five or thirty days.

MR. VAN WINKLE. Yes, one.

MR. WILLEY. Well, now a great deal of litigation of this kind must exist.

MR. VAN WINKLE. It might be that the first rearrangement would be sooner, say 1865, and then after each decennial census. They need not do it in 1871, but between 1871 and 1881.

MR. SMITH. It is not mandatory.

MR. VAN WINKLE. No—

MR. WILLEY. This is "at periods of ten years thereafter."

MR. VAN WINKLE. My object was simply to try to bring the second one nearer to the decennial enumeration; then the subsequent ones at periods of ten years. I make it as a suggestion merely.

MR. BROWN of Kanawha. I understand the gentleman does not make any amendment? I only wanted to remark that the idea of population can have no place in determining the labors of the judge, as the gentleman from Monongalia has well remarked; that one case of ordinary litigation where lands are in conflict would involve more labor than a hundred suits for debt or even two hundred of them. Again, the litigation of a community depends very much on its character and the business habits of the people. You go into one of your agricultural counties where the land-titles are settled and there is scarcely a law-suit in it. I heard the gentleman from Hancock the other day describe that the courts of his county had but little to do; that crimes and offenses were but little known; a quiet, peaceable, orderly community; pay their taxes and are at rest. Go into other counties of the same population, and I have seen in some counties not superior to Hancock or very little, five and six hundred indictments at one court; and in some cases several hundred against one man. Now, when we get into that character of litigation, it is not a question of the numbers of population; it is the number of offenses that has to be taken into account. The only way you can ascertain that is as now prescribed by law in the State of Virginia that the clerks of the courts record every year a certificate of the suits on the docket in their courts, of the old cases standing, of the new cases that have come in during the year, and how many that have been disposed of, distinguishing between suits at law and in chancery and commonwealth's prosecutions, that the legislature or whoever is charged with the duty of rearranging and apportioning the courts of the State and accommodate them to

the litigation and labors to be performed; can have some direct and satisfactory information before them. So that numbers of individuals have nothing to do with it. It depends on a man's business. In manufacturing communities you find no litigation; but in land-title counties you find a great deal more of it, as I know from experience. The gentleman alluded to one case that took some thirty days. I know of several today—and there are a number on the docket—that will take a month for each case. You cannot get through in less time. Well, now, it is useless to number that by population; and it is so in all those counties in which land-titles are unsettled; and they cannot be settled in any other way than by the courts. Population, therefore, ought not to enter into this computation at all; and as I think the gentleman has properly stated, five years perhaps is short enough and long enough to ascertain by the workings of this Constitution where an apportionment may be necessary. Ten years thereafter will be short enough to re-arrange and distribute the whole judicial system.

MR. SINSEL. I will offer an amendment to this section by striking out all the section after the word "circuits" in line 35. It will read then: "the legislature may, from time to time, re-arrange the said circuits." Now if we adopt this section as it stands, we will see that the legislature will commence the formation of additional circuits to gratify some petty interest, just as they have formed these little counties to gratify a certain individual. We would have had more circuits in the Commonwealth of Virginia now if it had not been for constitutional barriers. There was an effort made in the legislature a year or two ago to see if they could not give it that construction to increase the number of circuits. Within the bounds of the proposed new State we have about five and a half circuits with perhaps area to make nine. I would rather say ten, and have an end put to it than to leave it open to fifteen or twenty if they choose to make them. How has it been in our county? We have a circuit, sir, but it really has been no court at all to us so far as civil business was concerned. Why, for the want of time, the judge would come there at the middle of the day and the court hear the cause in the middle of the week and hold on probably till Saturday and adjourn and go home, when he probably had a week or more to sit if he had done it. Now if you give these men so many courts to attend to and require them to do the business, they will have to stay and do it. You leave it open in this way and you will double expenses in all probability. They

will neglect their business; they will not attend to it but will let the business accumulate on it. Well, the cry will be, "We must have another circuit now." I am in favor of having nine judges and reasonable compensation, and then of their doing the business. Let political matters go a little while and here is a judge or lawyer with one or the other parties. Well, he is out of place. What must be done? Why, a circuit must be created to make him judge. How has it been with the superintendents of roads throughout this State of Virginia? Every new road that was established or turnpike that was made there was a new superintendent put on it. The result was when the legislature passed a law to sell out these roads one man performed for three hundred dollars the business that fifteen had been doing for a thousand dollars. If you leave this gap open here you will find a similar state of things existing in our midst. Now, here we have increased the number of circuits over fifty per cent. We have unquestionably diminished the business in that court by extending the jurisdiction of magistrates, and there will be no more business in the circuit courts with their four terms now than we had before. So I am opposed to loafing in this kind of a style.

MR. VAN WINKLE. I am inclined to favor the amendment and a good deal for the reasons stated by the gentleman. The greatest number of counties in any one district is six, and you can give the judge ten days to each court, which I am sure would, on an average, be enough; and you can give him a month at home between every two courts.

Now, re-arranging the series—is that to take off one and give to another? Go and break up the whole system and have it open to that kind of influences that are frequently brought to bear on the legislature, and have the thing constantly hanging in jeopardy, as incidentally proposed, is injurious to the section. I think the amendment will reach the evil. It will leave sufficient power in the legislature to rearrange the circuits. They may go and turn all the judges out, and I do not want them to have that power. A judge should not be removed because he is politically obnoxious to them. If he is to be impeached, why let him be. I think, therefore, I will favor the amendment just offered.

MR. WILLEY. I cannot tell particularly about this matter. The committee were only desirous to provide such arrangement as would best lead to the administration of justice speedily, promptly

and satisfactorily. Suppose that it should turn out from experience that we have more judges than are necessary, then, sir, we have no authority to get rid of any if you strike out. It provides that there could be an increase if the necessity should indicate the propriety of it; but if experience should show that there are more judges than required to perform the duties of the various circuits, and also if the frequency of the courts is provided in this Constitution, four times a year, the legislature should have the authority to diminish the number of terms in a year. Now, sir, I think we ought to have some confidence in the legislature, at least in the people whose agents the legislators are. It is hardly possible, it seems to me, that the people would support such action as indicated by the gentleman upon the part of their servants in the legislature. I can hardly imagine that there would be any of the other difficulties suggested by my friend from Tyler. I think the tendency rather is to curtail these offices on the part of the people, the number of offices, than to increase them. But if it should turn out, sir, as it may, if we have a growing state, I hope the State will increase in population rapidly—a state that will increase in all its industrial interests rapidly; a state whose commerce will increase rapidly; whose trade and business will all enlarge rapidly; when we shall become an enterprising, a manufacturing, a commercial people, rapidly growing in wealth, population and in power—if it should turn out in five or eight or twenty years—I hope this Constitution will last fifty years or a hundred—if it should turn out that from the increased population and business we should have an unforeseen amount of judicial affairs to discharge the duties of the office, why, what sort of predicament would we be in? Driven to a constitutional amendment—to all that difficulty to remedy the evil which may as well be provided for by something like the provisions of this section. I really have not the apprehensions of the corruptions on the part of the legislature, or the toleration of it by the people, that my friend from Tyler seems to entertain. Nothing of the kind. Now, sir, the very fact to which he alludes is an argument in point here. Here was business to my certain knowledge growing upon the office of Judge Camden, for instance, that it was impossible for him to perform. Look, for instance, at the county of Marion, a court which I attended. We would go there the 8th of June and Camden would hold court until the wheat was ripe and then allow them to go home and cut their harvest, and he never touched a civil docket, being all the time engaged with the criminal. There has been a year's litigated cases

there on the docket, and while there has been two terms of the circuit court held in that county of near a month each term, yet when we wanted to re-arrange the circuits, when the obvious necessity was thus indicated for it, we are embarrassed by the prohibition of the existing Constitution of Virginia, which gave no provision to make any such increase of judgments. The difficulties of litigants in that county at least were due to the want of such a section as is provided to be inserted in this Constitution by this section. I think it would be wiser and better to allow this section to remain as it is.

MR. HALL of Marion. In addition to the remarks just made, I would just say the population of Marion is a little less than Marshall, Monongalia, Harrison or Preston. My impression is it would take a judge regularly working there three years every day in the year to dispense the business that is there pending and would accumulate in the time. To illustrate the fact that we cannot judge of this matter by population and that circumstances will arise that cannot be foreseen, that provisions must be made to meet these matters or the people are without the benefit of courts. We have a term of court there, occupied with criminal business term after term. It has been our fortune to send from two to eight and ten at a term to the penitentiary. Our court sits twice a year, commencing on the tenth of June and November, and at the November term sits about one month, sitting through the district court usually, sometimes adjourns for it. We more frequently run past the Fourth of July than adjourn earlier in the June session.

MR. BROWN of Kanawha. It seems to me that to strike out this from "circuits" in line 35 to the end of the section is to present us in the attitude of framing a Constitution for the new State calculated to prevent the future prosperity, growth and greatness, not only in the number of its people but in all the elements of wealth and business transactions of life; that it is, in other words, providing a Constitution and limiting its whole capacity in its judicial tribunals in nine circuits? With the supposition that either they will be unable to grow with growth of the State or fill up your Constitution. Now, if we go on the stand-still policy and suppose we will never grow any larger than we are, you might confine this to your precise nine circuits; but if we expect to double the population and quadruple the business in a few years, then it is to be expected you will have to increase the circuits or tear up your Constitution or go back to the people with an amendment.

Would it be supposed that we would make a constitution that will have to be amended in a few years to meet its wants? That they would be so oblivious to the facts; that this people were not to grow at all, and that therefore there would be no necessity for enlarging the capacities of the government that was to meet their wants? Now, the difficulty in my mind is that without the provision of the gentleman from Tyler of empowering the legislature to furnish aid to the increasing wants of the community by additional courts, that your courts would be so crowded the judges would be unable to discharge the duties. You will find hereafter, as now, the docket crowded with cases requiring years of labor before they can be removed. It is not in Marion only and in that circuit, but, sir, that is the character all through the State, that the dockets have continually grown and are today greater than when the judges went on the bench with every year. If gentlemen will examine the returns of the different circuit courts as reported to Richmond, they will find a continual increase in every instance almost. Now, what is to meet these necessities and demands? Gentlemen tell us while you have abrogated one court that transacted one very large portion of the business of the State, you have supplied the magistrate's court and they will take off the excess. Now, sir, you will find that instead of this they will only accumulate by appeals greater and more numerous than they now are; that you will have no intermediate cases between the magistrates' courts and county courts where they could go on farther, but they will go directly to the circuit courts and instead of diminishing you will have increased the whole amount of business. Then you add on the labors of these judges four terms a year and I ask gentlemen to take one of these circuit courts of seven counties, give them ten days, and that is too small for the judge to hold court and ride to the next court, and then make no account for accidents; four courts a year for seven counties in a circuit and ten days to each, is seventy days and that is four times seventy, or 280 days in court. Look at the country—mountain roads with rivers in winter, spring and fall, that are likely impassable, have to be swum by the side of a canoe. I say when this comes to be put in practice you will find difficulties of ever carrying out the principles of this Constitution on that score alone.

MR. SINSEL. I happen to live in a county where two railroads have been constructed which caused a large amount of business to accumulate there. Well, the principal court that we have had for

civil business was the county court; and in the transaction of that kind of business—collection of debts and so on—we only have four courts a year, the four quarterly terms. To my knowledge we never held quarterly court there the second week. We always got through the first week, and not all that very frequently. Four notifying days. Well, now, the whole amount of civil business almost in our county has been transacted in six weeks time, counting two weeks in regard to the hold-over. Because we had two circuit courts and not even then would not have to stay in session over a week. Well then, in addition to that, the county of Marion, which they complain of so, there will be three counties. The judge will have four months, or give him three months, to each county. He can hold only a court each month and have a court between times. He would hold twelve courts a year. Four counties would only have twelve courts a year. It would give him three weeks term and then give him a quarter of his time. He could hold each court a session of three weeks and then have one-half his time to stay at home. Can you get the people of Marion or any other county to sit and hold court longer than three weeks at a time, and that four times a year? No, sir, they will not do it. And we have increased the number of judges so that the business can be done with ease I have no doubt.

The question was taken and the amendment rejected.

MR. LAMB. I would ask the attention of the chairman to an uncertainty in the wording of this section. It authorizes the legislature at the expiration of five years from the time when this Constitution shall go into operation to increase or diminish the number of circuits. The term "after the expiration of five years" is very indefinite. The term which was used in the former constitution had the expression, I believe, of a certain period. I suppose the phrase has got in there by mistake perhaps.

MR. WILLEY. I do not remember how that is. The section is a little modified from what it was when I left. I do not know exactly how it was, but if an exact period was named, I would suggest to the gentleman from Ohio, it would require that the legislature be in session exactly at the expiration of the five years, and unless it should be done exactly at the expiration it could not be done at all. We might modify it by saying as soon after as practicable.

MR. BROWN of Kanawha. That matter met with a great deal

of consideration at the hands of the committee, I think very maturely. The committee have endeavored to arrange these circuits as near right as they possibly could; and unless some reason, and that reason a necessity, exists for changing it, it is not contemplated to change it. It will be seen the object was to get it right at first and let it stay right until necessity should require a change. It is not the purpose of the committee that this Constitution should be changed in this particular in ten years or a hundred unless some necessity arises to strengthen it; and that is left to the wisdom of the legislature when the necessity arises, and it is expected the legislature, who will be required to take an oath to support this Constitution will not undertake to alter it unless the necessity does arise. "May hereafter increase or diminish as necessity may require." It is not to be at their mere volition without this necessity. True they are made the judges of the necessity, and we suppose it could not be better confided.

MR. LAMB. I understand all that, but my attention has been drawn to the peculiar phraseology adopted here. In reading the former constitution it provides that the general assembly may "at the end of eight years" do so and so. Instead of "at the end" in this provision we have "after" the time named. I want to understand what is to be the construction of this. Suppose the legislature deemed that the necessity requires the alteration six years after the adoption of the constitution? Are they at liberty to make it then? Or in seven years? Does the section mean that it shall not be altered sooner than five years, within the five, or at any time after that period they have the unlimited right of altering?

MR. WILLEY. I understand that to be the meaning. I do not know that I find any exception to it if that is to be the construction. The former constitution, however, fixed that alteration to a specific time; and the present provision, taken in connection with the former constitution would necessarily imply that at any time after the expiration of five years the legislature might change the districts. There is no such qualifying term in the old constitution, "necessity requires." That very term indicates that the committee does not think there should be any alteration of the circuit courts within five years or thereafter until necessity should require it in the opinion of the legislature.

MR. LAMB. The legislature, Mr. President, is the judge of that necessity, of course. Whenever they see proper to alter it

the very fact of their having altered it is a declaration of the necessity, so that it amounts to the same thing after all. But I merely wanted to direct the attention of the Convention and Committee particularly to the necessary construction which I think will be given to the section as it stands.

MR. VAN WINKLE. Whether it is intended if the legislature does not do this at the end of five years that they are to do it afterwards and then wait ten years again, or whether it is your intention to give them the opportunity to do it at the end of five years and at the intervals of ten years after that period, is I think a fair question. Then would they be precluded if they did not at the end of five years have exercised it until ten years more?

MR. BROWN of Kanawha. The legislature will not re-arrange the circuits until five years have elapsed. Then it may do so at any time it pleases. There is no requirement that they shall do it at the expiration of five years, but that they may do it within five, six or whenever they do it, they cannot do it again until ten years afterwards, that is, ten years after they do it first. That there shall be alternate terms of five years; and I imagine it may go twenty years.

MR. VAN WINKLE. That is what I hold to be the proper interpretation of it; but I think it is rather uncertain.

MR. HARRISON. I expect the Convention is hardly prepared to act on this tonight. I intend to offer an amendment myself.

On motion of Mr. Hervey, the Convention adjourned.

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XXXVI. THURSDAY, JANUARY 23, 1862.

The Convention was opened with prayer by Rev. W. W. Campbell, of the Presbyterian Church of Fairmont.

Journal read and approved.

THE PRESIDENT. When the Convention adjourned it had under consideration the adoption of the third section of the report of the judiciary committee.

MR. SINSEL. I wish to offer a resolution:

"Resolved that the clerk call the roll each morning at nine o'clock and record the absentees."

MR. VAN WINKLE. I would like to know what is the object of the resolution.

MR. SINSEL. The object is this: Having adjourned, and insisted on adjourning, to nine o'clock, we meet here without a quorum; and if gentlemen insist on this early meeting I want it to appear before the country who are here and who are not here.

MR. POMEROY. I think that is entirely unnecessary. There was far more than a quorum at nine o'clock. The rule establishes that fifteen is a quorum, and I think that if gentlemen are detained by necessary business a few moments it is not necessary that their names should go on record as absent.

The resolution was rejected.

MR. HARRISON. I propose to strike out "five" in the fifth line and insert "three." My object is: we are attempting, sir, a new plan or system for our courts and throwing into the circuit all the business of the county court. From my knowledge of the business in my own county and the others composing that circuit I doubt if one judge will be able to discharge the duties that will be incumbent on him. As the section now stands it would be five years before that difficulty could be removed if that difficulty should be found to exist. The section provides that the legislature may, if it should so turn out on three years trial that the judges cannot dispose of the business before them, it seems to me it would be wise to relieve the legislature then if they in their discretion see fit to make the changes which they would be authorized to make as this section now stands, at the expiration of five years. The gentleman from Marion told us his civil docket had not been called for five years. Suppose that thing should exist five years more, valuable property would rot before it could be disposed of. It seems it would be better to enable the legislature to make these changes at the expiration of three years if they see fit.

MR. VAN WINKLE. Was there an amendment pending when we adjourned?

The Secretary stated that there was none, that this was an original amendment.

MR. HAYMOND. I am opposed to striking out five and inserting

three. I do not think the gentleman need apprehend any danger but what the present judges will be able to get through their business. I have not any idea that there will be half the business in the circuits as there is now, as those townships will do most of the business, and when we cut down the county courts there will not be half the lawing that there is. I am here to cut down the number of courts as low as possible. My people are all tired of courts. My colleague was very correct in saying we had too much law in Marion. Sir, we have had in that county 28 justices, 28 constables and about 12 lawyers; and with all the courts we have had, they have nearly ruined the people, and the people are getting tired of it; they are coming to the rescue of the country. Now, sir, the gentleman from Harrison need not apprehend any danger but what the courts will be able to get through the business, for most all will be in the townships. I hope the amendment will not pass.

MR. BROWN of Kanawha. While I have no particular objections to the amendment of the gentleman from Harrison limiting the time to three years instead of five years before this change could take place, I think upon a due consideration, it were better to permit it to stand as fixed by the committee. It is true that information might be derived within three years sufficient to enable the legislature to see that this arrangement was onerous and ought to be changed; but then looking at the circumstances of the country, it is not likely to be so, and I do not think we should hold out inducements to change, or encourage alterations in this Constitution before it can have a fair and satisfactory operation. We are now engaged in a war, the country torn upside down; the business of the country is deranged—the judicial as well as every other—and it is scarcely to be supposed that the return of peace, even were it to occur today, could bring about such an ordinary state of events as will enable the legislature at the end of three years to determine that this whole thing as arranged here is wrong. Five years is the shortest time that can reasonably be expected for the legislature to have proper information before it. When business assumes its ordinary course, facts to determine from what actually does take place how far this arrangement is unequal to the requirements of the situation. I hope therefore the Convention will stand by the report as it is.

MR. DERING. In reference to this matter of the courts, I for one, sir, would be willing to defer to the opinions of the bar on this subject and so far as I have heard an expression from mem-

bers of the bar in this Convention at least from my own section of the country, they think the legislature should in their discretion re-arrange the districts as soon as the gentleman from Harrison has indicated by his amendment. I know, sir, in my own county the civil docket is very far behind. There are a good many cases that have been on that docket for years, and the same is true, I believe, in all the surrounding counties. It seems to me, sir, that there will be an accumulation of business until this intolerable rebellion is put down, and there will be a great deal of litigation in the courts; and while we have cut off litigation on the one hand for controversies under a hundred dollars in the courts, yet, sir, there will necessarily be a large amount of increased business in the circuit courts from the fact that we have abolished the county court. Now, sir, it seems to me but just and proper that we should leave it discretionary with the legislature at an early period to re-arrange the judicial circuits of our State. It seems to me it would be wisdom to do so. If the demands of the people and courts do not require that they should be re-arranged; if it is found that they have time and that the workings of this system are producing proper results, why, then, there will be no necessity for a re-arrangement of the districts. But if, on the other hand, it is found that justice is retarded and that our dockets are crowded, that the judges of the various courts cannot do the business so as to meet the wants of the people, it seems to me that it would be entirely proper to let the legislature re-arrange the judicial circuits. With these views, sir, I shall go for the amendment of the gentleman from Harrison.

The amendment offered by Mr. Harrison was rejected; and the question recurring on the third section, it was adopted.

MR. BATTELLE. I believe it has not been amended.

MR. BROWN of Kanawha. I believe all the amendments offered were voted down.

The Secretary reported section 4:

"4. For each circuit a judge shall be elected by the voters thereof who shall hold his office for the term of eight years unless sooner removed in the manner prescribed by this Constitution. He shall, at the time of his election, be at least thirty-five years of age. During his continuance in office he shall reside in the circuit of which he is judge."

MR. SOPER. I move to strike out "eight" and insert "six" in the second line. By the vote just taken, sir, the legislature have the power of reorganization of these circuits, increasing or decreasing them, at the end of five years. With that provision, sir, I think it proper that the term of the circuit judge should be limited to six years.

MR. BROWN of Kanawha. I believe no reason that I was aware of sufficient has been assigned for the change proposed. The committee in this, I believe, have followed the provision of our present constitution, which has been in operation now some ten years and in this particular has never been found fault with. It may be questionable whether the time already there is not too short, and I think the argument if not is rather against the limitation under ten years. We have had some experience in frequent changes of the judiciary, and I think it has clearly shown that the more frequent the change the greater the evil. If there is objection to the officer, failure to discharge his duty, there are provisions proposed here to meet the case, and in other provisions of the constitutions to provide a speedy and easy mode of removal, so that the defaulting officer is always at command to be removed. When you have got a good officer, when you have got one qualified for the duties, this frequent change will not better the case. It has been found by experience, too, that the continual return of judges to the people for election is a great evil. Every change of court or judge necessarily involves an expense and is a detriment to the business of the circuit to an extent that is little known to the people except the suitors and the bar. When Judge Summers was elected to the bench in the Kanawha circuit under the constitution of '52, he had perhaps the largest practice in the circuit. The result was that all his clients were standing on the docket with a possibility of a trial of their cases. That involved him in almost every case on one side or the other. The result was the state was put to large expense in procuring special terms to be held by other judges and allowances made them to do it. That system was continued for a number of terms and through a number of years, and the result was that not a special term but had something out of the ordinary course of business. People had been in the regular terms attending to their business, and special terms found them unprepared. The result is in all special terms three-fourths of the cases to be tried at special term are continued for some cause or other arising out of the circumstances of the case. Well, sir, after the election of Judge Mc-

Comas for the same place, he was precisely in the same condition the judge had been before him. He had come back to the bar and was then in full practice on the circuit; and the result the whole court's business was brought to a stand-still in another set of special terms and judges brought from various counties and circuits in the county in order to hold these special terms to try these cases the judge could not try. Then another provision has been resorted to, to send these cases to the circuit court and the witnesses into their circuit courts to be tried by the judges. We have sent them to the different courts and wherever they have been sent it has been extra business crowded on another judge and in other courts where they had their own business to do and they were always shoved to the tail of the docket and are there yet untried. Well, now, try it in any way you please, the more frequently you bring about these elections the greater you increase these evils. It always will be the case because generally you will select the men that practice at the bar to go on the bench and thus you cannot avoid this evil. I think, therefore, every argument is against reducing the term to six years; and the report of the committee, both by the example set us in the present constitution and by the reason of the case, should in this stand as it is.

MR. BATTELLE. I am opposed to the amendment offered by the gentleman from Tyler. I would rather personally have a time fixed here for the office of circuit judge twelve years than six years; and I believe the Convention know that I have thus far been in favor of the liberal features of this Constitution, and I expect still to do so; but in reference to the office of circuit judge I wish to see such provisions adopted as will remove it as far as it is safe and practicable to do from the perpetually recurring effects of party strifes. I think, for one—and I take pleasure in saying it here now—that according to the result of my limited observation that among the things of which the State of Virginia have reason to be proud before the world it is in her past history in reference to this feature of the operation of her government. The general purity, integrity and elevation as exhibited in the character and acts of her circuit judges; and I would not see any provision inserted here which would tend to belittle the office and which will make it depend on the chances and exigencies of necessarily frequent political, and perhaps, party elections. I am satisfied with the report of the committee. I am no lawyer and by no possibility can be either now or hereafter an aspirant for judicial honors. I

think I represent, or at least I speak as the representative of the people in this, or I might speak solely as one of the people, in opposing the amendment proposed by the gentleman from Tyler, with very great deference to his superior wisdom and years, and experience in this regard. I think we ought not to lessen the term of the office fixed here by the provision in the report of the committee. If any alteration, I for one would be in favor of increasing rather than lessening it.

MR. STEVENSON of Wood. Mr. President, I am sorry that I shall have as the gentleman from Doddridge says, to take the parting hand of my friend from Ohio. We have voted together on what he calls the "liberal features" of this Constitution, and as he expresses a desire to do so still I hope after I have made my short speech he will be all right again.

MR. BATTELLE. One word. I do not hold that I have left that track in adhering to the provisions of the report of the committee.

MR. STEVENSON of Wood. No, I only supposed that he intimated he was about leaving it. That is all.

Well, I will state, Mr. President, that so far as I have observed the working of long terms in judicial positions, it has led me to rather a different conclusion from that arrived at by my friend from Kanawha. I think that if anything has been proven in the history of this country, and about which there ought to be very little dispute, it is that long continuance in any office has rather a corrupting more than a purifying effect on the holder of that office. And what is true in reference to other offices is true in reference to the judiciary where the term is made very long. I know there is a likelihood, of course, that you may cut down the term too short, and run to the other extreme. But we will find that in this, as in everything else, probably, that the medium is pretty generally where all the good is found. If that is a fair deduction, sir, from such observations as I have made I wish to apply it as an argument in this case. Now, sir, six years is long enough, it seems to me, for the term of a good judge, and six years is just six years too long for a bad one. I know there is a mode provided by which you can get rid of this incompetent judge, but it is full of formalities and will probably scarcely ever be resorted to—be put in that class as in cases where offices are filled by incompetent and bad men in other cases: would rather bear the difficulty till the end of the term than resort to the measures prescribed. I think, sir, I have seen

probably within the last year or two some of the effects growing out of the long continuance in office by politicians, or, if you please, by judges. I allude now particularly to the rebellion which is in our midst. The projectors of that rebellion; its aiders and abettors—the men who led the masses to engage in the rebellion—are men who occupied positions, either as judges, or as executive or legislative officers nearly all their lifetimes. That seems to me to prove the assertion which I made a while ago, as far as I go. The question now is here: whether this term of six years as proposed by the amendment of the gentleman from Tyler is not sufficiently long to enable any person filling the office of judge to perform his duties, and whether eight years will not be too long, as leading to the difficulties which I have intimated. I think the latter will be true; and I think that in the states—for there are a number of them where judgeships have been sustained within the last few years the result is such as I have stated. It has outlived the office rather than the contrary. There is another principle, then, peculiarly a Virginia principle—at least it is an American principle, and I think a correct principle because a republican and democratic principle—and that is that all men who represent the people in any capacity, whether legislative, judicial or executive officers or agents, shall be frequently returned to the people and that the right to rise to occupy an office shall be a principle observed in all the regulations of this country. The principle is a correct one, I do not care whether you apply it to a judgeship or any other position, with a frequent return at intervals of these agents or servants back to the people again has a purifying and exhilarating effect on the people and on the men who fill the places. For these reasons I shall have to part with my friend from Ohio for a little while and vote for the amendment of my venerable friend from Tyler.

MR. HAYMOND. I am with the gentleman from Tyler. I am opposed to anything like a life estate in this government. A few days ago we were fixing the time for the justices of the peace. We all said it would be dangerous to allow them over two years. Now, sir, what is the difference between a justice of the peace and a judge of the circuit court? The most difference is the pay. The judge gets his pay and the justice does not. If you extend the time of judges from eight to twelve years, would it not be a very great disadvantage to the young men of the country who are preparing themselves for lawyers, who are looking up to be judges some day? I think, sir, it would. You may recollect, Mr. Presi-

dent, some years ago we elected a President of the United States four years with the right to be re-elected. That time has been changed. It was thought four years was enough. There were other men who wanted to be President. There are other men who want to be judges; and I am opposed to a life estate in the government.

MR. BATTELLE. There is no proposition to make the term of office twelve years. The question is, I believe, on reducing it from eight to six. It seems to me the same principle ought to operate here as in other cases. An office is not for the good of the individual; offices are filled for the good of the people. This, or ought to be, the sole controlling motive. The question before us is simply, which is the better for the interests of the community? Not as providing a place for this man or that man. We do not make places for the sake of the individual but for the good of the community. Now, there is a reason in my mind very clear and palpable why the term of the office of circuit judges should be longer than that of the ordinary local magistrate. The office requires great learning, great research, and great experience for the purpose of properly discharging its duties; and by limiting the term to six years, about the time a man has by experience and research become fully qualified for the discharge of his duties you oblige him to vacate the office and subject him to the temptations during the latter part of his term of preparing the way among the people again for his re-election. I wish to avoid a recurrance of that sort of thing any oftener than is absolutely indispensable. I do not wish, by any means, to give to any man a life tenure in office; but my reason for opposing the amendment is based on what I conceive to be, not the good of the individual—for that whatever weight it has is a minor consideration—but my reasons are founded on what I conceive to be the interests of the community. I would have this officer, in whose hands to a very great extent is suspended all our liberties and fortunes and lives—I would have him so placed that he may hold the scales of justice equally but firmly and remove from him as many temptations as possible to have those scales preponderate unjustly either to the one side or the other.

MR. POMEROY. Mr. President, I am not in favor of short terms for offices where it is actually necessary for them to be long, but the view I take of this question is just this, that if a judge is fit to be judge at all he will undoubtedly, unless it is by feebleness of health or something of the kind will be a candidate for re-elec-

tion; and that is the reason I am in favor of the amendment of the gentleman from Tyler. I think twelve years is enough for a man to be on the bench. I agree with the gentleman from Marion in regard to giving them a "life estate." If a man was not to be re-elected, I would favor the longer term. But re-elect him after eight years and give him sixteen is too long, and I think every man will feel so; that at the age at which a man is elected judge he ought not to be elected for sixteen years. I believe it is a very general sentiment of the people that if a judge acts anything like he ought, he should be re-elected. And therefore I would be in favor of this amendment because it will give the man in almost every case time on the bench which I think is sufficient. If the friends of the measure and those that have had it in charge are opposed to this short system, then if they would be willing to say that men should not be re-elected, then I would go for ten years—but I think ten years—twelve at the most—is long enough for a man to be on the bench. I could very clearly show that the long term is a corrupting influence on the men, but it has already been done by the gentleman from Wood. We find there is far less charges made on the governors where they are elected for only one year than where they are elected for a longer time; and I think that would hold good in regard to charges on all these officers. It is said the judge ought not to use his position at all to promote his re-election; but leaving it eight years as reported by the committee and let him be re-elected and it does not do away with that. He will be just as likely to electioneer after having been on the bench eight years as six. So that that evil would not be done away with. And I really think twelve years is long enough. The office is lucrative. It is not every man that can be a judge; and therefore I would be in favor of this amendment if it is understood we are to re-elect a judge. If not, I am in favor of about ten years.

MR. SINSEL. It has been my lot to be about a court-house a good deal in my life and I have seen the practical workings of the two systems. Now, before the last constitution, our judges were elected during good behavior; and I am fully convinced and satisfied that so far as our county was concerned it was better than it is now. I am opposed to shortening the term from eight to six years. If you elect for six years, judges are only men after all; they wish to be re-elected; and they will devote more or less of the last two years to electioneering, preparing for a re-election. Well, then, they would to a certain extent neglect their business for

one-third of their term—two years at least before-hand—to shape their course to be re-elected; and this is done very frequently at the expense of some suitors. There may be a land suit or some one involving a great deal that they dread to decide for fear of incurring the displeasure of either one or the other of the parties where they have a great influence so that as much as possible they will stave that off until next term. Well, now, if you elect for eight years instead of devoting one-third of their time to re-election they will only devote one-fourth of the time to re-election, especially if they commence two years in advance, as they are very likely to do. Well, then if a judge has given satisfaction for eight years and the people desire his re-election I see no reason why they should not re-elect that man; so I am opposed to the amendment and shall vote for it as reported by the committee.

MR. HERVEY. I am in favor of the amendment of the gentleman from Tyler. A man to be elected judge must be, generally speaking, between forty-five and fifty years of age, say forty years of age; by the provision as it comes from the committee may be re-elected. That may make his whole term sixteen years, a difference of four years if regarded the term should be six. He may be a man well capable of discharging his duties at the time of his election and re-election, and yet by the ordinary course of events he must become feeble in health, as it is hardly likely that any one man can stand sixteen years of laborious service as judge. Besides, our policy is not to invest men with life estates in office. We have been pursuing a different policy heretofore. We have reduced the office of justice of the peace two years from four and prosecuting attorney the same. The general policy of this Convention has been to reduce instead of increasing terms. This is the constitutional provision. Now, the argument that we should elect a man for a long term because you get able men does not meet the case. Can you get able men for six years with the possibility of re-election? I cannot see the force of that. Suppose a man is elected for six years; he discharges the duties well. Will the people not most likely re-elect him? I am in favor of giving in this respect the largest possible liberty to the citizen. Besides long terms of office take away the responsibility of the holder of the office from the people and away from the agents of the people. They are not responsible to the people, and if re-eligible there is an impulse always resting on him to discharge the duties and be

faithful so as to make a re-election. I am in favor of the amendment of the gentleman from Tyler.

MR. BATTELLE. I have spoken twice but appeal to the indulgence of the Convention to say one other word I forgot to say before, and that is this: with the responsibilities, as I understand it of a merely representative officer and of a judicial officer to the people are very distinct and different. Or rather they are responsible in different ways. A merely representative officer, one who is elected, for example, to the house of delegates, or senate of Virginia, or the Congress of the United States, is responsible only to the laws of the land; but according to our theory of government he is responsible, and wisely so, to the will of his constituents, but, if you please, above all their caprices or prejudices. He comes under our organic laws which wisely provide for the frequent return of that sort of office to the people. It is their right that they should be frequently returned to the people and that they shall pass upon them, not only in reference to their conduct as touching the law either constitutional or statute but as touching their obedience even to their will or, if you please, to their prejudices. Now, sir, according to our theory of government, if I understand it, a judicial officer is responsible also to the people but in a different way. He is responsible in the eye of your written law, whether his term of office be long or short, his responsibility should be clear, distinct and emphatic in reference to his removal from office as you please to make it. And he is responsible—wisely so—for the proper discharge of the duties of his office, not to the caprice, prejudice or whims of people, but he is responsible to the written law as you yourselves have put it down and nominated in the bond. Now, sir, a judge, in obedience to the dictates of his high office, may sometimes feel himself, in vindication of the principle of justice in the person of one citizen of your county, compelled to violate the wishes and prejudices and the caprice of every other man in the county. If he does so unjustly, let it be written in your law that he shall be subject to impeachment and removal from office. But if a judge be compelled, while vindicating the law in the person perhaps of one of the humblest citizens of the community though he may run counter to the feelings and desires of every other in the community, we ought to so put it into our law that by frequent returns to popular elections that man may not be tempted to swerve from the requirements of his duty though those requirements lead him in the face of a large majority

of his constituents. I do not know whether I have succeeded in clearly expressing the idea that is in my mind. Perhaps I am like a judge I once read of. A man was made judge who had no legal knowledge at all and very much to his own surprise and mortification. His first impulse was to resign at once. He said he did not know anything about the duties of judge. A friend with whom he consulted told him by all means to accept the position and go on and always do right and be very careful never to give the reason why he did it. The idea which I wish to express is, I think, distinct in my own mind. Perhaps I have not succeeded in clearly expressing it on the minds of those who hear me. It is then on account of this difference in the way judicial and other officers of government are responsible to the people that I oppose shortening the term of office. I do not care what you put in the Constitution, and the more the better, to make these officers responsible to the properly constituted tribunals, I would increase rather than shorten that responsibility. But when we have got a good officer let us keep him, and let us remove as far as possible those temptations which perhaps few men in the land are capable of entirely resisting or pandering to and debasing their high functions—of perhaps the highest offices we have—to the mere prejudices and whims and unreasonable caprices of the people.

MR. STEVENSON of Wood. Mr. President, the argument of my friend from Ohio is unquestionably a good one but I think upon a little reflection he will discover it applies with equal if not greater force against his position than in favor of it. The whole argument is based on the supposition that the position of judge is something very different from all the other positions in society, that it must be regulated upon an entirely different principle. That is not more true than it is of any other office. There is a difference between a legislative office and an executive office. In fact, there is a difference in almost all the offices to some extent, and in some cases the difference is the very opposite to that condition of things that is found in the other offices; so that it seems to me the argument of the gentleman does not apply there. In what respect is the judge less responsible to the people than an executive officer, or an officer who makes the laws of a state? Why, I take it the responsibility in one case is just as great as it is in the other; and if this argument of pandering to the whims and prejudices of people is true it is just as true in regard to executive and legislative offices as in regard to the office of a judge. I think there is a fallacy in

the whole argument. I have heard it urged here twenty times. It seems to be based on this principle, that the great public tribunal, the people themselves, is less to be trusted than somebody just constituted by that tribunal to act for them.

MR. BATTELLE. The inference—for I said nothing of the kind—the inference the gentleman may draw from my remarks that I wish to make the judges responsible to any other source than the people is a very erroneous one. I have said that I think the people as well, indeed, better qualified to elect their judicial officers than as we used to have it, the legislature. I make no objection whatever to that, but to the frequent re-election.

MR. STEVENSON of Wood. There is no difference between us there; we agree exactly. But it seems to me in the application of that principle there is a difference. The difference is just this: that I say when a judge performs the duties that attach to that office with fidelity and industry and impartiality the great bulk of the people are better calculated to judge of that fact than any lesser number of people. And therefore if you make re-election—if it is so that a judge is to be re-elected, if he performs his duties impartially, if he even strikes down some favorite in some particular community, or a number of favorites the people themselves at the end of that term will appreciate that impartiality and sternness of his justice, and that will be an argument not against the man but in favor of his re-election and will operate so. Why, sir, the principle is a correct one as suggested by the gentleman from Tyler if it applies at all. Why not give them the term during good behavior, as under the old constitution, if the principle is true? No, sir, I say the principle that has prevailed in this Constitution and every one that has been made within the last few years has been this: that the frequent return to the people of the persons who fill all the offices of every kind is the correct principle, and they have acted on it; and the sense of this Convention so far has incorporated that principle in every vote which has been taken here; and I tell you, sir, that in the working out of the end you will find that that is the right principle after all. Talleyrand, I believe it was, who said once it was a common saying that "everybody knows more than anybody." The people—the aggregate public mind—will arrive more speedily and correctly at a conclusion on any great question in reference to any man or principle than any small body of men will; and I base

my whole argument in favor of the amendment, or a considerable part of it, on that fact.

MR. BROWN of Kanawha. The gentleman from Wood has given his views as predicated on principle, and that that principle is the popularization of the government; that it is the fundamental principle and should be carried into action. Now, sir, the gentleman has failed to draw the distinction I think in that principle in its application. We predicate popular government on the idea that power derived from the people is to make the laws and therefore they ought to be made by the agents in conformity with the wishes of the people. The more frequently you return your agents back to the people who make those laws the more plainly will you have impressed on the law the popular idea. But when that idea has been carried into a law and has become the law, then the rational presumption is you want that law faithfully carried out and applied, and not by any other influences to warp or change its execution, but to carry it out faithfully and fully in its application to all the people. The question then arises of selecting the agencies. In this view of the case in this department of your government what idea is to prevail? Are you then to select your agencies with the view to attain the best qualifications and from experience? He who guides not his pathway by the law of experience will find himself in a labyrinth of error. To secure by your agencies the more faithful execution of that object by bringing to your aid the necessary wisdom, and experience and independence. Well, now, gentlemen have given us something of the probable workings of judicial systems. It is not a departure from the most popular idea in human government. If they give us the experience of the past—and I must add my experience with that of those who look over the experience of the past—we will see that the judiciary of Virginia stands second to none in this country; and that if there is a distinguishing mark in the characteristics of the judiciaries of any country in the world I know it is in behalf of the judiciary of this commonwealth; that they have no superior either in this country or out of it—characterizing for integrity, for uprightness of purpose, for firmness of character and decision in all their transactions. That judiciary has been one that has held its office for life until very recently; and I believe the universal testimony of those who have had occasion to look over the subject of the judiciary within the last ten years that it has gained nothing over the old judiciary by the elective feature for a short term; that if there has been any

change it has been for the worse; and many and loud have been the complaints throughout the country people on account of this very defect.

Well, sir, the gentleman appeals to this fundamental principle laid down in the bill of rights. It is a principle which I adhere to as strongly as he does, that government should be based on the popular will, and public agents should be frequently returned to the popular will for approval or reform. But I will call his attention to the fact that the great statesmen and philosophers of that age who eliminated this principle and published it to the world, when they undertook to act on it did not carry out the idea of now-a-days in its application. The very men, the Revolutionary fathers, who laid down this principle applied it on correct methods of business to legislative, executive and ministerial departments, themselves established a judiciary for life. They discriminated in the application of the principle which the gentleman now seems to fail to do again, sir. Look at the fathers who framed the Constitution of the United States. I think that I would receive one universal sentiment of approbation when I say in this convention—Virginia convention—that the convention which framed that Constitution was composed of the best and wisest men, sir, that ever sat in this or any other land; that they entered on their labors with deliberation and calmness, with the high sense of the responsibilities and duties with regard to the future welfare and best interests of their common country; and that in framing an executive department they placed the President of the United States at the term of four years, the Senate of the United States at six years, Congressmen at two years; and when they came to the judiciary they fixed it during good behavior, for life. As long as the judge should discharge the duties of his office faithfully amenable only to the tribunals they arranged there to try and test his fidelity. And what now is the glory of the judiciary of the United States from all states in the nation? It is the fact that those judges hold their office and are above the turmoil and confusion of those warring elements below them; that they can survey the whole field of the Union in respect to the Constitution and laws in any case unbiased and unprejudiced, unterrified by anything that surrounds them. Turn them back and make them elective for a few years and how soon you would destroy that court's usefulness in the future government. I ask gentlemen if they would be kind enough to do themselves the justice to read an article published many years ago in defense of the judiciary of the United States written by Mr. Horace Binney,

of Philadelphia, in reply to some criticisms of English lawyers on that judiciary and that bench. It is one of the ablest documents on that subject that has ever fallen from pen of man, in which he defends the judiciary as the foundation of the state, the groundwork of American liberty and independence.

These departures from this principle the gentlemen tell us have been carried into all the new state constitutions framed within recent years; but they do not tell us that nowhere have they been found to work well. I do not know of any instance—if other gentlemen know they can tell us—where this term has been reduced below eight years in any state constitution; and if there is any such instance, I do not know an instance where it has been found to work better than when it was eight years and longer. On the contrary I will have to deny that there is a state in this Union whose judges serve for less than eight years are better than those of Virginia who served for eight years or longer; that they had better or purer judges anywhere. But that their short terms have never improved either the attainments of the bench, its integrity, its decision and character. Then, why do you offer it? Why cast aside the best experience of our fathers; why abrogate the fundamental principle under which we are living without reason, when every reason is against it? And for what? for the simple change, or to shorten the term by two years. We have adopted, I believe, the rule of four years for magistrates, and is it too long to double that term for a judge? We have adopted a term of four years for sundry officers; and if there is reason or experience on either side it is all in favor of the longer term. I can very heartily concur with the gentleman from Ohio in saying—while I am not prepared nor is it my duty as chairman of the committee to offer to change this report—that had the term been fixed at twelve years it would have improved the bench and thereby benefited the people.

MR. HERVEY. The gentleman from Kanawha has passed a beautiful eulogy on the judges and courts of this country. Well said. But, sir, it is a poor ship that will only sail in fair weather. It is a poor ship that when the storms come that will not ride the storm. The gentleman stands here an exemplification of that fact. He has recently been elected to fill a vacancy occasioned by the dereliction politically of a judge of his circuit. Why, sir, what is the fact? Is it not notorious that the southern judges, literary, able, as they are, have been the very leaders, were the van,

of this rebellion? Why, sir, even away up here in the panhandle, away from these influences, did not that thing occur? Where is your Camden, and others that might be mentioned? Gone to Dixie. Some of the members of your supreme court have taken the same course. Have they proved that in the hour of their country's danger they are to be rallied round and lauded and extolled and supported and invested with life-estate, because they betrayed their country? God deliver me from such judicial fruits as that. I think, sir, the fact has been conclusively proved that these terms ought to be reduced; these life-estates ought to be taken away; and the principle has been triumphantly vindicated that they ought to be returned back to your people from whence they have sprung and whom they have basely betrayed. I do not detract a word from the literary capacities and talents of these men. I say amen to all that argument of my friend from Kanawha; but "by their fruits shall ye know them." They have been the file leaders in this rebellion. They proved themselves untrustworthy, and the gentleman himself is an exemplification of the fact.

MR. VAN WINKLE. Mr. President, I take or feel very little of practical interest in the precise question that is before the Convention; but in my opinion it is entirely a practical question which gentlemen can decide for themselves according to their view of the circumstances which enter into the problem. It is very true, sir—and it is the case with all officers—that if you get saddled with a bad one you would like the time to come very quick when you could make a change; and if you have a very good one, it does not matter if he is not changed at all. The object of all these regulations is to endeavor as far as possible that the public shall be well served in these different offices and still have the control of them. Shakespeare says "there's a divinity doth hedge a king," and the doctrine seems to be here that "divinity doth hedge" a judge. I do not believe any such talk. I believe there is no more reason why a judge should be guarded and hedged around than a member of the legislature. Both of them are open to solicitation and corrupt influences around them. I do not know that it is more dangerous in the one case than in the other. We have heard, sir, often of this old maxim about the "independence of the judiciary and bar." We adopt it as meaning anything at this time of day. We who have looked into this region to what it does mean; was intended to mean. It is one of the principles of constitutional liberty of our forefathers in the mother country. It was adopted there be-

cause the courts stood between the crown and the people. The judges being appointed by the crown, and being—as has been admitted, I believe in all generations, that notwithstanding they were made life-estates and so removed from the fear of the crown. The lawyers were always found sufficiently submissive to the crown. I do think one of the most contemptible curs in history is Sir Edward Cooke—the father of all the lawyers (Laughter). A more servile scoundrel never stepped, perhaps on the face of this earth. The same conditions exist here as there. Do the people want to interpose this sovereignty of life-estate between these judges and themselves? For that is the whole question. The judge is their officer, as much as any officer accountable to them, appointed by them; and he is moreover made by the very terms of the report under consideration, made amenable for neglect of duty—I suppose he will be; all officers may be—for incompetency and neglect of duty. I thank the gentleman from Doddridge very much, for I believe it was he, who introduced that word "incompetency." I think the remedy lies there, if they will give us a way of punishing these judges and of getting at them to remove them if they do neglect their duty for any reason, I think the people have a great safeguard.

But, sir, to follow down this principle, in establishing the Supreme Court of the United States there was a reason there why that should be made to some extent an independent tribunal; and the reason is this: that it stands between the executive and legislative departments of the government and has charge, as it were, of the protection of both, and therefore ought to be subject to the whims of neither. Again, it stands between the states as independent sovereignties to the extent that they are, and the general government. And there is another reason why those judges ought not to be subject to the whims of either: it stands, as it were, perhaps to some extent, between the people and the general government. It has functions to perform such as no other court in the whole nation can be said to have. Why, sir, our courts have no such powers. Our courts, it is true are charged with the duty of interpreting our Constitution and they are called on to perform the most important functions in questions affecting person and property rights of the people, where it is exceedingly desirable we should have the best men to administer; but there is nothing that would bring that principle that was established, as I say, in England to apply especially to our circuit courts in this country or to

our court of appeals. I do not see it, at least. The true point here is, and it has been asserted by those who have advocated a longer term, that in order to get a good lawyer, a man entirely competent to take a seat on the bench, you must hold out sufficient inducements. One of these is to be found in adequate compensation and another in the long term. As the gentleman from Kanawha very justly observed, a lawyer who had a business by which he is earning in many cases a good deal more than any salary you are likely to give any judge is required to abandon that practice which after he has been out of it even two years he cannot resume at once under scarcely any circumstances because services to the public pay less money than he could earn by continuing his profession. Now, you cannot get such a man to come forward for one or two years. There is no inducement. As he begins to advance in life, he has laid up a little money and his work is becoming a little tiresome and he may be willing to go on the bench to serve for what he may consider an adequate salary provided he can be assured he can be kept there a sufficient time to make it an object to him. If he was limited to two years there would be no inducement whatever. But two years is manifestly too short, and twelve years would be too long; and it is for the good sense of the Convention to fix a term intermediate somewhere between the two. I should have very little choice myself and should hardly know how to vote between eight and six years. It is a matter, of course, which my practice of the law does not aid me much in determining. The question is about the inducement that is to be held out to a competent person to take the office. Well, between the danger that you may get saddled with a bad one and the chance that you may get a good one you are to choose between the shorter or the longer term. I hope when we come to fixing the salaries of this office the Convention will perceive that the arguments that have been urged here in reference to the long term all apply to the question of salary as well as any other. Depend upon it, a judge in any one of these circuits or on this court of appeals, if he does not attend to his duty has no sinecure; that according to the way legal services are paid, he will earn every dollar of any salary you will be disposed to give him; and, gentlemen, a good judge, one who is competent, has a good legal knowledge, would richly earn double what in all probability you will be willing to pay him; and it would be a saving if you could insure the occupancy of your judgeships by such men. I have no doubt of it because when you come to consider the costs of law—by the way, a friend of mine used to say it was a

luxury and ought to be paid for as such—but when you come to consider the costs, the mere costs taxed in the appeal are not the consideration or but a small portion of it—I believe I may say, a very small portion of it. The time that is spent in preparation, in attending the courts, the juries, the witnesses that have to be called at every court—it is these things, and such as these, that make up the expense of the law to a community. The mere sum in dollars and cents reported by the auditor as the expenses of the judicial system cannot represent one-half of it in its cost to the people. And, therefore, the question of filling the bench with the best men that you can get there is one that is a real question of economy. The paying of a few dollars more salary is a small consideration if that can be effected. I, sir, for one, with the gentleman from Kanawha, admire the judiciary of Virginia. There is no necessity for me to bear any testimony to that. We know the decisions of our courts in former years are received in every state and abroad, always with respect. The decisions of Virginia are referred to everywhere with respect.

But I cannot agree with the gentleman that the fact that we have made our judges elective has had any tendency whatever to reduce and detract from the respectability of the courts in later years, if such has been the fact. I think the gentleman will agree with me, sir, and perhaps every gentleman here will if he will look into the subject closely, that there was another cause that has tended to affect the judiciary a great deal more than that fact of making them elective by the people. Perhaps the very thing that induced the people to call out and require those judges to be made elective was the evil to which I am about to allude. In ancient times in Virginia and in most of the other states when a judge was to be appointed by the legislature, the fitness and qualifications were carefully looked to. And if they often took from their own side of the house they looked to get the best man they had and appointed generally a man of good judgment, correct habits and having every other qualification as far as they were to be obtained for the filling of the place; and doubtless, sir, we had on our circuit bench even at that time judges who were themselves fully equal to occupying the bench of the court of appeals. I apprehend the general court, which consisted of all the superior and circuit court judges, contained a large proportion of men who were abundantly capable of being sent from there to the court of appeals at any time. It is the court of appeals whose decisions

are reported that give character to our judiciary abroad, and what I am saying now is that the state quarterly circuits contained many men equal to those on the court of appeals.

But what, sir, was the evil? These appointments when made by the legislatures of the several states, I can myself lay my finger on the time when the change took place in this country, if it were worthwhile to back such matters in a discussion here, could point out cause and men that led to it. And then former considerations were left out of the question. Men were appointed to judgeships, as to anything else, simply because they were noisy politicians or useful politicians. I do not mean to say previously to that a man's politics had been disregarded. But between two men, one of opposite and one of the same politics, those who were called on to select would take the man of their own politics. There is no objection to it in that point of view; but when it becomes but a mere partisan matter, with partisan leaders, and to fill the offices simply because they made the most noise at the polls, then the evil culminated. And, now, sir, if you say the people themselves have abused this privilege of electing their judges in the same way, I would say in reply that if the office was brought down to this partisan level in the legislature you had better put it in the hands of the people directly. The remedy will come soonest when in their hands. Experience, they say, is an excellent schoolmaster. While the thing was new and first appointments of judges were to be made it may be the people were careless about it; but after they have tried once or twice they will be more careful. I do not say, sir, by any means, that the judges selected here in 1852 were very good judges. So far as my observation extended, while they were younger men in many cases, yet I think I will say this, and I think the experience of most gentlemen will agree with me: they did dispatch business faster than their predecessors, at least I speak of my limited experience. There is a want perhaps in selecting men to fill these offices not so much of mere judicial ability, legal potentiality, as to find united in the same person not only legal ability but industrious and business habits. Or take even that legal ability and industry, yet to wade through the business of a trial, to dispatch it, to give everything its proper chance and yet to be pushing the business requires a systematic mind—a business mind we may call it—which is not always united in the same person. And when I say this, I only admit the truism that something is never perfect. We have got to do the best we can.

The considerations that will come up under this section of the report and under various other sections will be the practical question, what is best under the circumstances? And while I have given perhaps the views that will govern me as to how I shall vote, I may not be able to apply them correctly even according to my own authority. But I think it is a practical question worthy the consideration of every member as to, first, the effect that the long or short term will have in inducing proper men to take the office; and, second, whether there are remedies sufficient to get rid of a judge who should not answer the expectations of the people, so that you would be safe in making the term a long one. As I have already stated, between six and eight years I certainly have very little choice. I trust, however, that this is a matter of so great importance and so very near to us, that due consideration and reflection will be given to it by every member free from prejudice, seeking only to see what is best to be done under all the circumstances.

MR. DERING. I do not rise to make a speech on this question, but merely to suggest an amendment which I think will have a considerable influence on the vote of this Convention on the pending question. My amendment will be of this character, in the 43rd line, after the word "constitution" to insert: "but he shall be ineligible after having served two terms." Now, Mr. President, if one term is to be fixed upon by this Convention, I would certainly advocate the longer period; but if he is to be eligible for a second term, why then I should go for the shorter period. And while I concur in the arguments that have been adduced in favor of the shorter term, yet, sir, I think a judge, if he is a good one, should be kept in office for at least twelve years. If he is a bad one, we had better get rid of him at the end of six years. I will leave this amendment of mine to be thought of and discussed by the Convention and shall vote for six years if they conclude to make him ineligible after two terms; but if, on the other hand, for one, to make him eligible to a second term, I shall vote for the long period.

MR. SMITH. This is a subject in which, as a citizen, I feel some interest. My own opinion is that the judiciary have a wider influence—a quiet influence—than that of any other body in the country. Their operations are quiet but none the less felt. And a pure judiciary and a learned judiciary have a great and beneficial influence on the morals of the country, and upon its prosperity. People do not without first considering the subject see the great

importance that belongs to this branch of the government. I regret that a prejudice to some extent exists in the country towards them. One of the best judiciaries the world has known—the ablest and the most pure and upright, is the judiciary of England for the last two hundred years. We are all in the habit of looking to it for its wisdom, its purity, and its just administration of the laws of the country. In this country, law is king. We have no monarchy before whom to bow but the monarchy of law; and that law is administered by the judiciary. That monarchy ought to be pure and learned, he ought to be, but for the prejudices of the country, lifted up to independence. I know it is a position that will rather startle the public mind; for I say it is the interest of the poor and humble that he should be so. The great and powerful need no protection; their influence in the country—their wealth buys them protection, secures it to them; but to the weak and humble it is far otherwise. They are the subjects of oppression, but give power and independence to the judiciary and there is their shield, their protection. I go for the independence of the judiciary. I am in favor of it as an original principle, not on account of the rich and wealthy but on account of the poor and humble who may ask protection from it and ask it in safety. Our distinguished Chief Justice Marshall in the later period of his life when in the Convention of Virginia in 1829-30 makes the remark that "of all the ills that heaven can inflict on a weak community, the worst is a too dependent judiciary." I concur in the sentiment. There is a judge to be elected; he comes in for office; he has served one term and he seeks re-election. Every man who is his elector may be sued in court; and however just and righteous he may be, he will be swerved more or less by interest. It will control the best; and when a man who has a hundred votes at his beck and a poor humble dependent that can hardly control his own vote come in collision in his court, how does the poor and humble man stand? Here the judge says I decide in favor of the humble man and lose a hundred votes. I decide against him, I gain a hundred. Now I ask you, considering the frailty of human nature, its inability to stand against temptation whether justice is secure under such a contrariety of interest on the part of the judge? To make him independent, to place before him no temptation but the desire to do right and to be upright and honorable with a high reputation in his position, where the humble can stand on the same pedestal as the rich—the man with his two hundred or three hundred and the man with his million—so there shall be no difference between them. He stands his equal in every respect before the

judge. I admit that in the former convention I was for submitting the election of judges to the people; and I was led to that from the fact that party had had such a powerful influence in the election of judges that I thought perhaps the people would be more honest and would make better selection if one party were entirely excluded from all participation in the office. But I must confess that the effect produced by the operation of this rule upon the public has greatly disappointed my expectation.

Sir, I undertake to say that the judiciary of Virginia has declined in learning and wisdom and purity. I have had some experience of it in my own country; I know how it operates there. There is a man now who is fleeing to the South in pursuit of his "rights" who has been elected to that office but is unworthy to untie the latches on the shoes of a competent man. He has neither learning nor integrity; yet he takes the stump for four months; he prods about his neighbors' log cabins, kissing every dirty child he meets to secure this office. I maintain that he who will prostitute himself to secure an office by electioneering for a judicial office is unworthy of the position. He should not have my vote. But it is done. I recollect in the convention I said I did not believe that any man who aspired to this office would dare to take the stump to electioneer for it; but now, sir, at the cross roads every sort of maneuver and trick is resorted to by those who aspire to that part of the judiciary. I am disgusted; I claim to have no interest in this matter; but I have a love for my country, and I desire to do that which will promote its great interests. I am here defending the rights of the poor and the humble. I will not undertake to defend the rights of the rich. They can defend themselves; but I say that the poor and humble, the unenlightened, the weak—they are the parties whose interests we ought to look to. And yet when this is the case, unfortunately for the country and if this view is taken of it, we are looking out for a return of election to this office to the destruction of that other community whom we claim to desire to protect, the poor. I am a democrat in feeling from the very sole of my feet to the crown of my head. I go for the humble, not for the rich and yet in maintaining the doctrine I now maintain I am denounced as an aristocrat. I have not a drop of aristocratic blood in my veins. I come from a county where an aristocrat is held in contempt; and I hold it in contempt. In this great confusion which has sprung up in this country—which I regard as an effort of those who have precipitated this revolution to establish an aristocracy, and it is

that which I abominate and resist. It is the idea that is inculcated in the South that a man with his hundred negroes and thousand acres of land ought not to be placed on an equality with a man in the hills here with his fifty acres. When he goes to the polls he must have political influence over and above him. I denounce the sentiment. I go for political equality; and when I come to the judiciary I go for the protection of the rights of the poor. And when I maintain an independent judiciary I think I am serving the object I have in view, the protection of the poor. Yet I say it is unfortunate that such direction has been given to the public mind that he who stands for an independent judiciary is the supporter of aristocracy. Good Heaven! How can it be alleged that he who seeks to give independence to the judge to decide for the poor as well as the rich and give security to the poor, is maintaining an aristocracy! I may maintain democracy in its most thorough purity if I maintain the cause of the poor and those who have not political influence themselves.

These remarks are not entirely, I know, relevant to the issues; but it is an auxiliary to the issue that is before us. The issue is what period shall a judge be elected for? I say the longest term. If you extend the term you remove that much farther from the elective body the transfer of this office; and the longer period you adopt the better it is for the poor. I dislike to see a frequent recurrence of this office to the people because the more frequent the less security is given to the uninfluential community. I say therefore so far from striking out "eight" and inserting "six" you are consulting the interest of the great mass of the country, and the poor and humble here constitute it by retaining the longer period or even increasing it. Let us have as infrequent recurrence to the elective power as it is practicable. I do not believe it is possible—for when the people resume power they part with it with the utmost reluctance; but if they should rise superior to their prejudices and adopt a judiciary for all time to come during good behavior I say it would be the greatest blessing you could confer on your community.

But here is a clause to which I have no objection, which would relieve it of all its difficulties: "Judges may be removed from office by a concurrent vote of both houses of the legislature: but a majority of all the members elected to each house must concur in such vote; and the cause of removal shall be entered on the journal of each house." Where a judge is incompetent; where he fails to

perform his duties; where he is lazy and idle and negligent, there is cause. Where he becomes corrupt, there is cause. Where he turns out a public politician, he violates all the decencies and proprieties of life by going on the stump and making speeches. Until recently; until the whole country has become demoralized by secession, such a thing as a judge going on the stump has been unknown in Virginia. But I am sorry to say the first example of it occurred in the country in which I reside. I speak of Judge Ward, and then followed Judge Brockenbrough. He descended, as I think, to tread under his feet the ermine that surrounded his office. Judge Brockenbrough, I say, became a stump speaker in this great rebellious canvass, whilst he was acting under the solemnity of an oath. Whilst Judge Ward was acting under the solemnity of an oath to observe the Constitution and maintain it in violation of that oath and bringing down Heaven upon his own conscience, he committed perjury every day of his life in trying to break up that Constitution which he had sworn to support. Yes, sir, your judge (turning to Mr. Hagar).

MR. HAGAR. We don't claim him.

MR. SMITH. He is your judge, and he is one that was elected by the people.

MR. HAGAR. A disgrace to them, too.

MR. SMITH. That is what I fear of your elective judiciary—that there will be disgrace upon disgrace heaped upon the country.

I am an old man and have had much experience in the judiciary, and I pray you, in the name of Heaven, if you do make a judiciary, make it independent—as independent as you can. Forget all these narrow little prejudices that grow up in the public mind and come up magnanimously to the issue; to the question of the interests of those who are involved, and do your duty fearless of consequences. If I sustain a measure that I cannot justify before my constituents, I go by the board; and that is a good rule for every member of a legislative assembly to adopt. Seek what is right, looking to the right and do it and take the consequences. That is a good rule. But too many of us stop and look back to see what his constituents will say. What will the influential men say about it, and how will it operate on my future election? He who does this does not perform his duty—his whole duty to his country.

I want this Convention in framing this measure to look to this

result: what plan of a judiciary most advances the interests of the country? The mass of the country; the humble class to which I have referred. What form of judiciary; what term of office; what mode of election will best serve the great public interest? Ascertain that and then, though the heavens fall pursue it. That is the true policy; and whenever I hear men get up and ask for short terms I am very much afraid they are looking back to see how their constituents will regard it.

I, therefore, of course, shall oppose striking out "eight" years. I would prefer—and I say it from long experience—that I would be subserving the very best interests of the country—to make it twelve years and make him ineligible to re-election. That has two sides also. I agree with the gentleman from Monongalia that there is an objection to this. You approach nearer an independent judiciary by making him ineligible. You do approach it. For I do not care for the judge; I care for the people. And there is another reason on the other side. As a judge learns, and improves and becomes capable of doing business to the satisfaction of the country —an honor to himself—why, he is to get off. He is out of the ring and you cannot select him again. But then the question is whether you do not better serve the interests of the great mass of the people by giving him one long term and then make him ineligible. I think of the two, I would rather give him twelve years and let him be ineligible than adopt the other. But while he is elected by the legislature I would not care whether it was eight or twelve, especially as we have so admirable a safety-value in this very Constitution, that the legislature by concurrent vote may remove him. But I pray gentlemen in coming to their conclusions on this question to look to the people—not the rich, but the interests of the poor people. I claim to be the advocate of the humble, the honest, the industrious laboring community, not those who are running from precinct and from township to township, going to cross-roads, giving out liquor and leaving money to electioneer with. I go against all that. I go for a judiciary that are in a condition not of temptation but to do justice to all.

I came in very hastily without much consideration of this question. I hope my views are understood. I hope what I have submitted to the Convention will be deliberately and calmly considered.

MR. VAN WINKLE. Before the gentleman sits down, I should like to ask him one question.

MR. SMITH. Yes, sir?

MR. VAN WINKLE. Who are these judges to be independent of?

MR. SMITH. They are to be independent of everybody but their own duty.

MR. VAN WINKLE. I suppose the gentleman remembers in England, where the crown could not say, Go down there, but could say, Come up here.

MR. SMITH. They managed the crown; they controlled the crown; they were superior to all power; and hence we derive from that very operation the supremacy of civil law. Civil laws is above the military. When they come to administer the law, they administer it justly and independently and may call down the dominion of the crown in England. But the crown cannot crush them; they can maintain the civil law. But if they are guilty of misconduct they may be impeached and removed. We have a much more extended power granted here. We have the power of removal by concurrent vote of the two houses of the legislature, not even in the form of impeachment but by merely voting; and wherever a judge is corrupt he may be removed. I want a judge to be so independent that he may be at liberty to do justice, and that if he acts corruptly he may be brought before the legislature. I say every judge has a character himself to form. There is no man so free from corruption that he will not study to protect his own interest and give his name to posterity by the wisdom and virtue which he brings to bear in the administration of justice. He has every motive to integrity and justice; every motive that can influence the human mind to be just and to be accurate in his judgment, because it is on that alone his future fame depends. But if he is an elective officer, then he has another interest much greater; he has the interest of an election to subserve and he has to cultivate the affections of the cross-road politicians, the rich men and all that class of people he has to contend with. But make him independent, there is no interest to subserve but justice, a just administration to high and low, rich and poor. That is the way I want it to be. But I have despaired of doing this, and I desire to approach that which comes nearest to it. You may put it eight years, or make him ineligible, or two terms and then make him ineligible. I would prefer taking the middle ground, giving him twelve years and ineligibility. I do not see that there is force in the interrogatory propounded by the gentleman from Wood. On the contrary it occurs

to me like pandering to public prejudices. I do not seek it. I care nothing about public prejudice where I am right; and if I cannot control public prejudice, let me sink under its baneful influence.

MR. POMEROY. I do not design saying much. I believe if I understand my friend from Monongalia he is in favor of the shortest term unless made ineligible.

The Secretary read the motion: After the word "constitution," in the 43rd line, insert "and he shall be ineligible after having served two terms."

MR. POMEROY. Did the gentleman understand that to apply to the amendment of the gentleman from Tyler, that if six years is carried then after two terms he shall be ineligible?

MR. DERING. I said after. If the gentleman will allow me to explain, if they were elected for six years—if the six year term carried—they should be ineligible after having served two terms. As to the eight years, that is a matter for the Convention to consider. I do not think you should continue a judge in office sixteen years. I think twelve would be a sufficient length of time under all the circumstances.

MR. POMEROY. I conceive that it is one of the subjects that comes before us which as a Convention we can discuss with the very best feeling on all sides. The reason I am in favor of six years in preference to eight is that if they are to be re-elected it will give a judge a long enough service. I will venture to say this, that in seven districts out of nine if you make it eight years, you do not re-elect a man, while if you make it six years it will be the other way. By making it six with eligibility you will get twelve years service out of your judges instead of eight. Because however truthful the remarks of the gentleman that has just taken his seat (Mr. Smith) and I accord great weight to them, men will not be re-elected after they have served eight years, because there is a strong prejudice in the minds of the people, right or wrong, against long service. Now the question is, will you give the judge twelve years and do away with the objection of the member from Kanawha? If you put the term six years and re-elect, if the judge is anything like a good judge he will be re-elected, making his service twelve. But I am in favor of a slight modification of the idea suggested by the gentleman from Logan, that he ought to make it ten

years and make it ineligible for re-election. But if we are to re-elect, I say sixteen years is too long.

MR. SMITH. The term I fixed was twelve years, but I greatly prefer a longer term and ineligibility.

MR. POMEROY. So do I; but as the matter stands I am in favor of six instead of eight. You can re-elect a man who has held an office but a short term easier than if he has held it for a long term. Therefore it would be much better, in my opinion, for us to say ten years or twelve years and not be re-elected.

But it is a foregone conclusion that we cannot place this matter in the hands of the legislature. The people demand that it shall be in their hands. If there is any virtue in the theory that a man will mature in the six years and his services be more valuable in the next two years, becomes a better man by holding for the longer term—how does it happen that not a solitary man of them elected under this provision for eight years but has gone into the rebellion? Not a solitary exception is found but what they are either in active or to some extent aiding this rebellion. I tell you the fact is that having a man as judge for eight years does not make him an angel or make him stand by his country in the hour of its peril, but it does appear to make a man fit to aid in this rebellion.

MR. SMITH. For the credit of our judiciary there is one man who has not run off into the rebellion—a very worthy and estimable man and an able judge, I mean Judge Lee. He has adhered to his integrity.

MR. POMEROY. I said I did not know there was a single exception. I am glad to hear that there is one in this section of country where we might have expected they would stand firm.

MR. SMITH. Also another, Judge Pitts, of Accomac.

THE PRESIDENT. The question is on the amendment of the gentleman from Monongalia.

MR. POMEROY. Well, I am in favor of this amendment and the amendment of the gentleman from Tyler, not that I have any particular prejudice in favor of that period but because I am in favor of giving the judge twelve years of office, and if you make the term eight with re-election you lessen the probabilities that a man will serve longer than the eight years.

MR. SOPER. I have been very much gratified, sir, as well as instructed by the able arguments which have been given to us on the question before the Convention by gentlemen holding various opinions. Having made the motion to amend, to which an amendment has been proposed it may become necessary for me to offer a few words in behalf of it. I was induced to move to have the term six years because I found the Convention had adopted the five years in the preceding section under which the legislature shall reorganize, increase or diminish, the number of circuits. Probably if the legislature saw fit to take action under that section it will be done at about the time of six years from the time the judges were elected. The object of limiting the term of office to six years, if alterations may be made in the district, especially if the districts should be diminished or increased, there will be no incumbents in office who would in any way interfere with such arrangement as the legislature might see fit to make. That is the reason I fixed the period at six years. I believe myself that the country would be safe if the term was fixed at four years. We all know that the policy of the country is one of progress and improvement, recognizing at all times that the power rests with the people. Until we have tried this principle thoroughly, we ought not to condemn it. It has grown up in opposition to the order of things in former times which has been so much eulogized by some gentlemen. Let us see what are some of the objections. In the first place, the gentleman from Kanawha tells us it was inexpedient to change that because of the expense of frequent elections of judges; because if you put a new judge on the bench he would have a large number of clients and would be so interested in their cases and the questions to be determined in the court you would have to go elsewhere and get some person to decide those cases. I apprehend there is nothing very objectionable in this argument because you will find provision is made in this report requiring judges to interchange the holding of circuits, I apprehend without any increase of salaries. I do not know what the practice has been in Virginia when a judge has been called from one district to try a case in which the resident judge is interested, but I suppose he received no pay aside from his salary. If he received any benefit at all, it would be in the traveling expenses. I suppose that to be so. If this interchange of judges, this right of interchange which is provided for in the report, is carried into effect what objections arise from the fact that a lawyer is elected and cannot act on cases in which he has been interested as counsel are obviated? But I hold it would be the true

policy for every judge in the State to interchange and go from county to county, all of them inter-changing, one with the other throughout the whole State. It would prove beneficial not only in the circuits where the courts are held but it would enable a large portion of the electors when they come to elect him they should consider the most talented and competent man for the vacancy in the court of appeals. So I apprehend there is no objection to the motion I have made from that point of view.

It is said you are tempting this judge to shape his course as to obtain popularity with a view to his re-election. The gentleman from Logan gave us a pitiful and mournful description of the mode and manner which judges in his portion of the state pursued to secure an election to the bench. I know very little of the character of the people in that portion of the state, but I venture to say that if a judge should come before the people of Tyler and show the least disposition to act in that kind of a way, I do not believe he would get five votes in the whole county. He would be utterly despised. If there is any argument in favor of frequent elections it is the very argument which the gentleman has put before the Convention when he describes the character of his constituency in view of the election of judges in the hope that such small influence might be brought to bear upon them that they would have some respect to the office, to their interests and to the reputation of the country in which they live. If that was the character of this people, I would have a judge elected every year and I would go to work and urge every man in the community to aid and assist me in trying to improve the minds and conscience of such a constituency (Laughter).

Who are we likely to put on the bench? All the gentlemen here have lauded the integrity and intelligence and the purity of Virginia judges. Well, so far as my knowledge has extended, I heartily concur in everything that has been said in that respect. You will find that hereafter the men elected judges in my section will be men of that description. Let me say further, you take a young man of thirty-five and place him on the bench of the circuit court, he has every motive to devote all his energies and abilities to the discharge of his duties with zeal and purity of purpose. In addition to that he is placed in a school where he will improve and it will be beneficial to him throughout in this respect. The great difficulty with lawyers—and the older they grow the greater, is to look at one side of a case, and when they come to

study out the law applicable, it is the law that favors one side. It grows into a kind of habit; and you will find them wherever they are called to act very often running to extremes on one side. But you take this young man who is just about maturing his mind and place him on the bench, he is benefited by his study and experience. He is instructed by the briefs of the lawyers who appear before him. He goes to work and so disciplines his mind so that he sees a thing just as it is without feeling or prepossession on one side or the other; and thus he is fitting and preparing himself for the discharge of his duties, and for the discharge of any other duty in life he may be called on to meet, in case he should leave the bench.

In regard to pandering for popularity in view of election, I have never found a judge in Virginia that would take the stump. The bench is the most popular position a man can be placed in. If he is a cool, deliberate, industrious, careful man, looking out for the rights of all parties, he will be looked up to by the community with respect, and hence you find that where a judge has thus discharged the duties of his office and he comes before the people again for another election, it is the worst thing in the course of events to take and remove him. It requires the very strongest kind of political influence and power; and even there it is very rare that you can bring a majority of even a prevailing party to go against a judge who has thus demeaned himself. I know when a judge has decided a case in the heat of feeling, men may attribute to him improper motives because of this consideration and upon the moment before he leaves the court may use some expressions against a re-election of the judge; but when that individual returns home, when he becomes cool and looks at his case on its merits and when his intelligent counsel assures him there is no remedy for him because no right of law has been violated, no improper decision made, and there will be no relief to him to go further, when he comes to view that, sir, he will have feelings of regret at the expression he threw out against the judge in the heat of the moment. It will have the effect of reacting upon him and he will become more in favor of that judge than he ever was before, because he is pure and disinterested and fairly discharges that duty. I am confident that no man that is fit to fill the bench has anything to fear from letting his name be submitted to the people for re-election. On the other hand, if he is a passionate man of strong prejudices, if that can be seen and traced in his conversation and acts when on the bench, the cry will go up that such

a man is unsafe to be trusted; and I submit to this Convention whether or no it would not be best to have a short term instead of a long one to get rid of an individual of that kind. Most assuredly it would be, sir. If any influences should prevail in the mind of a judge in view of a future election it would have precisely a different effect from what gentlemen have anticipated. Sometimes judges grow tired, possibly indolent towards the heel of a term, and grow uneasy to get home, and they are liable under influence of this kind of a feeling to put business over to another term that ought to have their attention now. If by making the term short it would have a tendency to make judges industrious, to remain patiently and quietly at work to try cases that are ready and await their action, it would be a strong argument in favor of the short term.

Now, we come down to the amendment proposed by the gentleman from Monongalia, limiting the election of judge to two terms. I am opposed to that amendment, for this reason: Here we are to authorize a judge of thirty-five years of age to take the bench.

MR. DERING. Will the gentleman from Tyler wait a moment to let me modify my proposition. I will submit to him a proposition to strike out in the 41st line the word "eight" before "years" and insert "twelve" and the words: "and thereafter to be ineligible."

MR. SOPER. I am opposed to that limit. My friend from Hancock seems to think—

THE PRESIDENT. Is there any objection?

MR. HERVEY. I would object, so far as I am concerned. I had intended to vote for his proposition. It suited my views exactly, I cannot go for twelve years.

MR. SMITH. I hope the gentleman will permit the gentleman from Monongalia to offer such form as he chooses and then he can strike out the amendment. The objection I hope is withdrawn. I am opposed to that for this reason, perhaps it is right as it stands, as the gentleman from Tyler is opposing the modification.

MR. SOPER. Not satisfactory, but I am not going to own it. That is what I meant, sir.

THE PRESIDENT. The question would be on the adoption of the proposition of the gentleman from Monongalia as modified.

MR. SOPER. You place a young man of thirty-five on the bench.

He is so situated as to care very little about the salary because it will not be the prevailing object of the gentleman. He discharges his duty to the satisfaction of the people. He grows with the feelings and affections of the people and becomes what we call one of the most popular and influential and beneficial of the judges we ever had. If we are so fortunate as to get an individual of that kind at the age of thirty-five I venture to say he is competent to discharge the duties of that office for thirty years to come. He will then be sixty-five, and I believe that is not too old an age in order to have the duties of a judge in high position well discharged. Why not leave the officer with the community in which he lives? If a man grows in knowledge and in the affections of the people and if the duties are discharged to their satisfaction let him have a life-lease of his constituency in short terms, because every re-election is an approval of his course. If there is to be no re-election, then I would adopt the proposition of the gentleman from Monongalia. But I believe the safety of the country is to leave this whole matter with the people themselves. That is what I believe.

And now, sir, I am opposed to that amendment to the amendment. I am in favor of making the term six years with a right of re-election so long and so often as a majority of the people approve of it. And I believe we shall best test this good principle which is now so prevalent of the growing age by adhering to this course. I know it has been said about judges that they have gone off under secession influences. Well, it is to be regretted, but I apprehend there is none of us living here or none of our children that will ever live in this country to witness such another era in the history of the land. I hope not; I trust not; and I think, sir, the great body of the people in their strength, integrity, honesty and love of country will rise up and give us such a character by putting down this rebellion and putting it down so effectually that there is no person on this earth living that will ever live to witness such another era as we are now passing through.

I hold to short terms of office because so far as my experience has led me I am satisfied that a man that is depending on the public even for a short period will be found easily approached, affable, attentive. He will not consult his own feelings and put himself above the people and tell you when you go to have your business transacted to wait till some other day. Nothing of that sort. He will always be at his post; he will discharge his duties with promptness and impartiality, giving satisfaction to all around him. That

is a reason I am for short terms. I have briefly stated why I shall support the amendment I have offered myself and why I am against the amendment to the amendment proposed by the gentleman from Monongalia.

MR. DERING. I am decidedly, sir, in favor of the amendment. As modified by myself at this time it will read thus: "for each circuit a judge shall be elected by the voters thereof who shall hold office for the term of twelve years unless sooner removed in the manner prescribed by this Constitution, and thereafter be ineligible." That is the manner in which it will read after it is amended if adopted. I am in favor of the one term principle for judges from this fact from the considerations which were so cogently and forcibly presented by the gentleman from Logan. I desire to keep the ermine pure, sir, that the office of judge shall be above the common offices of the day and that there shall be no temptations laid before them to prostitute their offices by pandering to the popular prejudices in their decisions or by having to stoop for the office of judgeship. It is a high office; on which much depends; and in the exercise of the functions of that office they should be kept as independent as the nature of things would allow. When the convention of 1850 determined that judges should be elected by the people, I was opposed to the doctrine, but it is useless to oppose it now. It is a foregone conclusion that the judges in the State of West Virginia shall hereafter be elected by the people. I am in favor of one term for various considerations but more particularly from this fact that they will be above the lower influences that are brought to bear in seeking a re-election. If bad judges, bad men, should be elected to this office they can be removed, for this, of course, provides for removal if they prostitute their offices by any acts unbecoming the position. Allow the office, then, to be for twelve years, because in all human probability a man will never be elected judge before he is forty years old, or forty-five. One term would then bring him up to fifty-seven, and when a man arrives at that time of life his mental energies are impaired to some extent and he can retire with credit and honor to himself if he has done his duty. It seems to me this proposition is a mid-way proposition. It will meet hearty concurrence, I hope, and therefore I submit it, trusting it may be the pleasure of the Convention to accept it.

MR. HAYMOND. Mr. President, the gentleman from Monongalia tells us that he is decidedly in favor of his amendment for

twelve years. I am, sir, as decidedly opposed to it. When up before, I told you I would oppose a life-estate in this government. I desire to see a new state of affairs. I desire to see a stop put to this thing of politicians hunting offices. If you make your terms long and your salaries high, the politicians are always in the field. If you want good men, put your salary low and your term short. Good men will come to the rescue of their country. Where are the men that have been in office all day? My friend from Brooke told us where Judge Camden was. Where are Floyd and Wise? At the head of the armies pulling down this country. I am opposed to anything like this. The gentleman from Kanawha told us we had in Virginia the best judiciary of any country in the world. The gentleman from Logan tells us we have been degenerating ever since the legislature made the office of judge elective; that our judges have been seen going about the country kissing the dirty children. Sir, if the judges desire to kiss the dirty children, why let them do it (Laughter).

MR. LAMB. I am strongly in favor of adopting but one term for our judges. The peculiar character and province of the judiciary is to defend unpopular rights. The majority ought to defend the rights of minorities and the rights of individuals peculiarly in the case in which these rights are proved to be unpopular. It should therefore be our effort to so establish your judiciary that a man who occupies the judicial office shall not while he occupies that office become a candidate for any other office. It is impossible if you allow him to be a candidate, during the latter portion of his term at least, that his decisions will not be influenced by his personal interests. A question comes up before him between A and B. B is a man of great influence throughout his district. If he offends him by the character of his decision of the case he jeopardizes his re-election. You will be exposing him continually to influences of this kind. I would say to the men whom you are disposed to put into the office of judge, take the office for the term for which you are elected. We cannot allow you to sully the character of that office by pandering to any party. As long as you continue in that office, you must hold yourself free and independent between the parties which may agitate the country for so long you shall have nothing to expect from them. I have seen, or at least I have thought I saw signs of this influence in the judiciary which has been elected under the present constitution. But the important principle I think you ought to recollect is that the judiciary is to defend rights against

power; that one more object of your judiciary is to defend the rights of minorities. One more object of your judiciary is to maintain the rights of individuals, where the exercise of those rights or the securing of those rights to them may be unpopular. One great object of your judiciary is to have a tribunal to which we can all appeal with perfect confidence that it cannot be influenced by party. I would elect your judges for a suitable term; for if you render them ineligible, in no other way can you secure the proper qualifications for the office. But I would cut them off from all the influences of party. I would leave them there under an interdict that they should not become candidates for office; I would leave them there under such regulations, as far as possible, as to secure their independence of party.

MR. HAGAR. As I expect to oppose the amendment to the amendment, of course, it is important that I should try to determine what ground I do it on. I shall try to condense what I have to say into as few words as possible. In the first place, in reference to the term of the judge, for twelve years, why we might just as well—and it would meet the approbation of the people throughout West Virginia better—to take it out of their hands entirely and put it in the hands of the legislature and make it for a life-time. If we want to represent their wishes, as far as my information extends on that principle, in speaking for myself, let us take it out of their hands entirely; better do it if we want to represent the wishes of the people. We are fully willing to submit to their judgment to elect their Congressmen every two years, to submit to their electing senators every two years; we are willing to admit they have sense enough to elect their representatives every two years; but for that office of judge—circuit judge—don't let them have a word to say unless once every twelve years. That is enough. Now, there is inconsistency in the like of this. The Senate of the United States, I believe, can be elected for the term of six years. One of the arguments why they should be elected for a long term is that we will not get good men, competent judges, smart men, if we only elect them for a few years; then that they will be corrupt if we leave them eligible for another term. I don't believe a word of that. You make the term six years and end with that and eligible no more, and we would have just as good men as we have got in the district. These lawyers that want such a long time will be in the field, I will insure—enough at least to fill the positions.

But in the next place, they cannot possibly get through the business. In six years there is considerable. There is to be a great deal left for their successor. Well, if they cannot get through it in six years the probability is they will have more at the expiration than at the start. That is the probability if you judge from the past.

The next objection I have, or another, to the amendment of the amendment is that they will have nothing specially to influence them to act right that they may have at least the good wish of the average or common class—the poor people, the humble, as my friend from Logan would say. He doesn't like this way of tempting men again into the poor-houses to kiss the dirty little children; he doesn't like that palavering around the poor. It is too condescending. I will agree to that. The judge ought not to electioneer. He might at least put in the papers that he was a candidate. That would be sufficient. I would be glad if this electioneering was done away with entirely and with all classes; but electioneering, to some extent, I suppose, will be kept up while the people have the right to elect the men necessary to serve for any of the various offices in this State. But we must follow up the principle by which we have acted thus far in this Convention. Then I contend if we put the term six years we will still get good men as are in the district—men as well qualified; for we do not know any man until we try him. We have elected some men that I thought very good that turned out very bad. A heap of men have better heads than hearts. If we find the man is not right six years is long enough to be bothered with him; and if he is bad enough there is a provision in the Constitution under which he may be turned out. Now, who are the least likely to be favored? Is it the poor man, the "humble man," or the man of power and influence, if they are biased at all to do wrong? Past experience and observation say it is the man with property and influence, and if any one is in disfavor it is the poor man. The poor man doesn't know how to go about turning them out of office. Take the power out of their hands to vote for them and they will stay in a life-time. If we have a bad judge we can turn him out and put another in at the expiration of six years. If he is a good one we can keep him six more. The great danger is he will grow corrupt by keeping him in office too long. There must be a long time to a judge; not less than eight, twelve or sixteen years. Then he must have a good salary—$2500 or $3000 a year. The best men in the districts will be candidates for judgeships. It is all folly to talk about a long

time and big salaries. I go in for them having a respectable compensation, enough to justify them, to induce the best men we have got. We have always candidates enough for these offices. Don't be scared that you will get nobody without giving them twelve years. You will not have some gump. You will have Judge Brown or my friend from Logan, and if their time is only six years they will be all the better judges; be on their good behavior. Judges are not perfect men; they are not angels. Perhaps they go astray as often as other men, not for want of judgment but for the error of the heart. We have evidences enough of this in the last two or three years. I have no objection if a man serves us well for six years to vote for him again. I am against the amendment for twelve years; in favor of the amendment for six years.

MR. STUART of Doddridge.. I must confess, sir, when the proposition of the committee and the amendment of the gentleman from Tyler was before this body, I took no interest in the question; but now when I find it is sought to be engrafted on our Constitution a principle which in every respect I am opposed to, I have to raise my voice in opposition to it. I stand here, Mr. President, an advocate of the honesty and integrity of the purposes of the most of the people at all times. I have been tolerably consistent in my course here, and that is that these terms of office should be short; that there should be frequent returns to the people from whence they are derived; and I believe every vote I have cast has been looking to that thing. Why say a judge shall be ineligible after serving one term? Where is the argument and where is the reason for the ineligibility? Is not this casting a reflection on the integrity and honesty and judgment of the people whom you hold office from? Are they capable of electing judges and presidents and senators and congressmen? If so, let them do it. If they are not, take it from them in the name of common sense. Do not let the people have that privilege. If the people are not the proper judges whether an officer who has held a position for six, eight or twelve years is or is not competent to fill that office again, why they are not proper to judge in the first instance whether he is a capable or competent man to take the office. This principle that has been carried out heretofore will cut off some of our best judges—some of as good men as have ever filled the bench—to say that they should not be eligible to a second term. Where would have been such men as your Marshalls?

MR. DERING. He was appointed.

MR. STUART of Doddridge. Was he? Well, suppose he should have been elected, where would he have been? We may have Marshalls in our mountains, but the people are the men who are to judge of these facts, to be affected by them. It does seem to me the argument of the gentleman from Logan was most felicitous when he gave us a history of a certain judge in his county, the advocate of carrying liquor to the crossroads and kissing the dirty children. Suppose this Constitution had given that man twelve years, what remedy would the people have had to correct the evil? There would have been an incompetent judge holding the office for twelve years, where under the proposition before us it would have been cut off in six years. We never would have had the opportunity of correcting it, and if he had proved himself an incompetent man they would have remedied the evil. But they would be debarred of that privilege if you give a man what is almost a life tenure of office. The very thing the gentleman seeks to avoid would have been fastened on the people. If you elect a judge for one hundred years, the same course might be pursued by him. He might carry his liquor to the cross-roads; he might go around kissing the children, and where would be the remedy? If the Constitution provided for a term of a hundred years they could just as easily be elected for that term as for six or eight or twelve. The only way to correct that evil is to let it go back to the people. I have the utmost confidence in the integrity and honest purpose of most of the people; and when they see they have done a wrong, let them have an opportunity to correct it at as early a period as possible. If they were competent of judging at one time they are at another. But says the argument of the gentleman from Logan, you let this thing go back to the people again and a judge is eligible to re-election and it will influence his decisions. My conscience is easy about that. Is it to be supposed or argued that a gentleman who arrives at a position of this kind that he is to be influenced in this way? Are we to look upon our judges in this manner? I stand here as a defender of the honesty and integrity of our judges. I do not believe they are to be influenced in this way; and my course will not be influenced with the expectation that they will be influenced by such impure and improper motives. But supposing they are, let us see how the argument of the gentleman will bear the test. He supposes a case where the parties are a poor man on one side and a rich man on the other. The latter may be able to influence a hundred votes, the former hardly controls his own; that the judge when called to decide the case looking to his

future election will be inclined to give judgment in favor of the rich man contrary to law, contrary to right. Now, let me say, if we have a judge of that kind, a man disposed to give judgment for the rich to oppress the poor, against law and against right, with that man we could pursue but one course on the face of the earth, to sweep him from the bench and forever disgrace him. In such a case the favor of the public would lean towards the poor man; because, I do assure you, that the majority of the people are of this class, the poor people, and they are always watching their rights, and whenever it is ascertained that a judge is disposed to oppress them he would be swept from the bench if he was disposed to favor the rich. But judges are not going to risk anything of that kind. They will not do it, sir.

Then, Mr. President, if the people are competent to judge as to who shall fill these offices at one time—competent to judge as to the capabilities and qualifications of the officers who are to exercise the duties of this office—they are competent to say whether he should be re-elected or not; and if competent let him go back at as early a period as practicable. The people are the purifiers of all these offices. Let them recur back to the people. But if you give a man a life tenure of office, he will perhaps curry the favors of the rich because the rich can bestow on him favors the poor cannot. Do you want to avoid, and ought every man desire to avoid the oppression of the poor and always give them their rights? Then by no means anywhere invest these life-tenures of office. Now, that is my opinion, my experience through life; and I have been observant as I went along and have read a little and reflected some. Consider, deliberate and you will see if I am not correct. The poor is never looked after; for in these matters you are looking for some purpose. But you will always see the favor of the rich curried, I don't care where you go. Give men these life-tenure offices and they would hardly condescend to speak to a common man, hardly recognize a poor man—these life-tenure office holders. When that system prevailed, you must recollect that a common man was afraid almost to approach a judge; they thought he was some kind of a man superior to a common man and he was not hardly to be approached at all. I used to be afraid of them myself (Laughter). But since I have got to mingling with them, I have found out they are nothing but men at last.

I am utterly opposed to the amendment of the gentleman from Monongalia.

The hour for recess having arrived, the Convention took a recess.

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AFTERNOON SESSION.

The Convention reassembled, the President in the chair.

THE PRESIDENT. When the Convention took a recess it had under consideration the adoption of the substitute offered by the gentleman from Monongalia.

MR. SMITH. I would suggest to the gentleman from Monongalia, being one of this kind who if he cannot get the best is willing to take the next best, believing that ten years would be more acceptable to many members of the Convention, I would suggest to him propriety of so amending his proposition as to make it ten instead of twelve years.

MR. DERING. I will accept the suggestion.

The Secretary reported the motion as modified.

MR. STUART of Doddridge. I would just desire to call the attention of the members of the Convention to the fact that it is now proposed to make the term ten years and ineligible thereafter. Suppose we elected a judge thirty years of age and he serves ten years, he is then forty years of age—just in the prime of life, perhaps when he is capable of rendering good service as a judge. It seems to me strange that you want to make him ineligible.

MR. SOPER. The latter part of that amendment, to elect for ten years and be ineligible after that, the people have got no hold on him whatever. He will be an honorable man, I suppose, but if he is subject to failings and impulses like other men the result will be that your docket instead of being cleared up will never be touched hardly. The dockets are accumulating. Take Tyler, for instance: There are cases on that docket now that were there when I came into the country fifteen years ago, and when a man knows he is not required to adjust as to his time when his time is out—has no further expectations in relation to the office, why, sir, he will in the first place be looking around for other business, to engage in other transactions, and will be figuring in oil wells or something of that kind. As some of our judges here have been, and

the performance of the duties of his office of judge will be attended to only just enough to entitle him to his salary. Our circuit judges now are not occupied one-half their time in holding court. He is not like a judge on the bench, because at general term they hear arguments and retain the papers and return home, review the authorities bearing on the different points; and they write out their opinions in vacation. They are thus continually occupied. Not so with your circuit judge. He goes to the circuit, is occupied there a few days; and I believe there is not a judge in this vicinity that I ever became acquainted with that has spent quite half of his time holding courts. Now, I want all these things taken into consideration. If you make him ineligible and give him a long term and make him perfectly independent of the people, he will do nothing more than just enough to occupy his office. Because it is understood the salary we give here is a great object. We are making a man rich, and for that very reason he will be turning his attention to other pursuits in a pecuniary point of view.

MR. VAN WINKLE. I wish to second, with slight exceptions, the remarks of the gentleman from Doddridge, and some he made this morning. I think this ineligibility after a single term, even if it is twelve years, is a wrong feature. I see not what good is to come of it. I see not what evil is to be prevented. If a judge has held his office twelve years and given satisfaction, he is not the man I would suspect of entering into petty intrigues for the purpose of procuring re-election; because I do not think he who was given the place primarily would descend from the high eminence in order to do so. If at the expiration of either of these periods, if he had taken office at the age limit fixed in the Constitution, he would be deprived of it in the very prime of life, with his intellect at its best and long before it would begin to fail in a healthy person and would be the very man we would want. I apprehend some of the evils gentlemen speak of as a want of temper. I hope the gentleman from Monongalia will at least so far modify his motion that a judge shall not be ineligible, and make it so that he may be eligible in another district. I am told there are several of these circuits that will not afford a person suitable for their own judge. I do not mean owing to the way in which they have been laid off but because counsel of ability are apt to center around places where the business is best. I suppose the gentlemen would hardly pardon me if I would say that where the carcass is, there the crows will be gathered together. But the situation of our country in that

respect is well known. We have not yet the state of society to be found in older countries which gives us men of the highest educational or intellectual stamp; and therefore I think we should be a little cautious in excluding men from office unless there is a sound reason for it. Now, in the case of sheriff, there does exist such a reason why they should not be immediately re-eligible; but so far as I have noticed at least other reasons may have been assigned at other times I see none sufficient to justify the exclusion of judges who have served one term, such as the fear that a judge may electioneer for his own re-election. When they talk about his electioneering, of his neglecting his own court, they must remember that every question has two parties, and if he decides for one he disgruntles the other. Cases are not decided by the circuit judges but by juries. I think this fear of the corruption of judges is carried a little too far. I think we should be willing to make the terms of a reasonable length so that if a judge, without being liable to impeachment, should not be suitable to the people—they might desire to have some one who would move a little faster, and the people would wait until the term expired, and if satisfied there was some inherent wrong in the man, they could drop him and put another in his place. If this term is so long, I think evil would be inflicted, and if the result of making it so long is to make the office ineligible, then I am opposed to it on that ground.

Some states have fixed a limit of age. I think it was fixed at sixty years in the Constitution of New York. I forget the date —21 or 20; but at any rate it turned Judge Kent out of office at that age who had been the chancellor of the state and who continued to get paid for opinions for at least twenty years afterwards and retained the full vigor of his intellect. I could mention names by the score of men who retained all their intellectual powers to the age of eighty. Mr. Madison wrote one of his best papers after he was eighty. John Quincy Adams continued in the House of Representatives until he was upwards of eighty. So that this would strike directly at and exclude perhaps the very best men from serving as judges if they had once been judge. A judge is a sort of journeyman. He must be trained and equipped when he begins his work. It is not so with the professions. A lawyer is not always read. He must make a beginning it is true. But after he has taken his place on the bench the judge must be ready and equipped to meet any question that comes before him. His acquired knowledge has cost him years of preparation and study and it may fit him to continue in service many years longer. Yet no matter how much

people may desire to continue him; no matter how much more competent he may be than the person named to succeed him or than anybody else, by making him ineligible to re-election you deprive the people of his services.

I would again suggest to the gentleman from Monongalia to modify his motion so that the exclusion does not apply to any but the district in which the judge has already served; to leave it open; if one district cannot re-elect him, let another district be open to him.

MR. DERING. I will accept the modification, for I desire to be accommodating and suit the thing to the gentleman.

MR. VAN WINKLE. I would prefer it in that form, but I am not disposed to vote for it.

MR. HERVEY. I still have my objection to modification. My objection to placing this long term in the Constitution is the unsettled state of the country. It is impossible in many places in this state for the people to meet together and hold their elections.

I understand the original proposition as now modified to be a compromise. In other words, the report of the committee is eight years. But, sir, this compromise runs first to twelve years. I cannot see the compromise there. Now ten. If the practice of other states is of any effect, it seems to me—I am sure, indeed—that the term of ten or twelve years is far above the average. In the last half hour I have taken the trouble to look over a number of constitutions of other states. I find Minnesota, supreme court 7 years; other courts 7; Iowa and Wisconsin, 5 years each; Iowa, supreme court 6, district court 4; Arkansas, district 8, circuits 6; Florida, circuits 5; Missouri, supreme court 12, circuits 6; Alabama, 7; Illinois, supreme court 9, circuit 6; Mississippi, 4; Indiana, supreme 6; Ohio, not longer than 5; Tennessee, supreme 10; Kentucky, court of appeals 8, circuits 6; Georgia, superior 3, inferior during good behavior; Virginia, 12, circuits 8; New Jersey, supreme 6; New York, appeals 8, county 4. Now, here is a long list falling far below twelve. I cannot see the propriety of running up to such a long term. I prefer the proposition of the gentleman from Tyler to anything that has been before the house, except, perhaps, that I would not continue him to two terms.

MR. BROOKS. I have listened during the day to the discussion of this question and I have come to the conclusion that to insert, we will have to go to make a man ridiculous and how that is to be

done, I am not able to tell. In the first place, the report of the committee would not do from the fact it would prevent the corruption of the judgship. Hence it must be amended and he must be assigned over to the will of the people in six years to make him a pure man. Then he must be retained for a term of twelve years for the same purpose. Now my own experience has taught me that neither will have the desired result. I do not care if you extend it during life, you could not make a good man of him for he is not naturally so. But I do not care if you submit to the people every two years, it will not do it. I will tell you now some of my acquaintance with the workings of this matter. Under the old constitution where men were made judges by the legislature and during good behavior, a gentleman of my acquaintance, one of the first lawyers I ever knew anything about, was promoted to the office of judge. That man has been referred to by gentlemen on this floor in rather an obscure manner. I think in the history of that man both these results will be shown to be ineffectual. You will remember that his first appointment was for life or good behavior, and that is the very man that one gentleman hinted at vomiting on the pavement, not only so but there was a young man arrested in our county for theft, having stolen the pocket-book containing $120.00. The young man acknowledged and the money was found. And he acknowledged where the pocket-book was, and it was found according to his acknowledgment. With all these facts in evidence, he was brought before a jury; but prior to this, having gone through the preliminaries. When the court came around and he was to have his final trial, a brother of his father, who resided in another county, came there to that court. He said to him, "John, are you very uneasy about your son?" "No, Jim, I am not uneasy about him; I was until I saw the judge. You know Jim that when we went to school together, he and I were great cronies. He tells me I need not be scared." The result of the trial was, the boy was found guilty sentenced to three years in the penitentiary. When the verdict was rendered the judge said, he must allow the boy another hearing. He gave the jury long instructions, another court was held, and the young man acquitted in the face of these facts. Hence this was an impure man, incumbent of the office of judge for a long term. He passed on and I could, if it was necessary, give you another one or two more instances that seem to set forth the same facts; that although the legislature appointed for life, he was not the right kind of a man. But the constitution is changed and that man was removed from office by the new constitution.

Well, with all these facts that have been alluded to, and that I know was known by the people, that man was elected to office by the votes of the people. Now, which is the great safeguard, long or short terms? The legislature—or the people? I ask you where the safety is to be found, when to my own knowledge both have so actually failed in accomplishing the design for which the gentlemen have been contending the whole day? I feel disposed myself to say that it will be a great saving of time to cast away these safeguards, one on the one hand, and the other on the other, and fall back on the report of the committee, and do the best we can; and if we can.

MR. DILLE. I have some trouble in reference to the position that it is proper for me to take in reference to this question. There is part of this substitute that with some modification, I desire; there is part of it I am wholly opposed to, and if it be proper, I would ask before a vote is taken that the question be divided as I find a difference of opinion prevailing among the members of the Convention if I am a judge from the speeches made. I think it will be proper to divide the question. My friend from Monongalia and then I think the members of the Convention could all be accommodated and vote their sentiments. That proposition as it now stands, is to change this term of office to ten years. Some are in favor of ten years, some in favor of eight years, and some in favor of six years. Some upon the other part of the proposition are in favor of judges being eligible as to a second term and others are opposed to it, and I think under the circumstances it would be proper that the question be divided.

MR. BROWN of Kanawha. I desire to say a word before this.

THE PRESIDENT. The Chair would have some doubt about the suggestion of the gentleman from Preston being in order.

MR. BROWN of Kanawha. I was in hopes that it was in order, because it seems to me that there is some diversity of sentiment about this, and as that proposition of the gentleman embraces two distinct ones upon which sentiment differs unquestionably, while I myself should have no objections to increasing the term to ten years, I think it is still more objectionable to make the judge ineligible. We had similar differences no doubt on the committee, for that committee was composed of gentlemen representing almost all the differences and diversities the Convention would feel. The result of their labors is eight years, and re-eligibility. I confess, sir, in

looking at this matter upon principle at the time perhaps eight years, while not as long as many of the committee might desire and think best, yet it is more than others think best, and, therefore, may be a compromise and is about an equilibrium between the two. And furthermore as the wisdom of the convention that framed the present constitution, and the endorsement of a very large majority of the people of Virginia—for it was adopted, perhaps by the largest majority of any constitution ever submitted in the state in its favor—it has therefore, wisdom and experience on its side; and a few years one way or the other is no great matter, so far as principle is concerned, and the truth is principle is not materially affected, whether you adopt six, eight or ten years. I can see no great principle involved in it one way or the other. Reasonable time is certainly desired by all. I have therefore, determined to support the report of the committee and take eight years as its stands, though I should not object if the Convention should see fit to make it ten. I am content with eight. On the other hand the report prescribes that these officers should be re-eligible. The proposition now is that they shall not be. I think there is a principle; and I think that this very exclusion is predicated on a hypothesis that is at war with the fundamental principle on which the government rests, and that is the competency of the people to re-choose as well as to choose. I understand that one of the highest incentives, it seems to me, apart from the high considerations that ought to actuate every man to discharge his duty in an office, would be the re-approval of the people that elected him to that office. It seems to me if you take away from the incumbent that consideration that you remove a great deal of the inducement to a faithful discharge of the duty that the people impose on him. Now I admit to the upright judge, who will be guided in his duty by a sense of right to do that which he is required to do no matter whether it pleases or displeases, the motive of future success would have little weight. But the argument is predicated on the idea that the man is so corrupt that he will not from a sense of rectitude discharge his duty but will seek to aggrandize his office or abuse it and prostitute it for the purposes of election. Now, if he be of that debased character the question is which considerations will have most influence with him to promote his chances of succeeding in a future election by prostituting his office or by an upright, open and proper course of conduct before the world. I believe here as I do in the purity of most of the people; and I believe that the man who pursues the even tenor of his way with an eye single to his duty will

find that in the long run the surest road to re-election. I therefore believe the greatest security here is to leave this open to the people to judge at the end of the term whether the officer has discharged his duty and answered their expectations.

I believe on the whole it will be more wise in this case to stick to the report as it stands, with eight years for the term and re-eligible.

MR. DILLE. I desire if practicable and in conformity with the rules that the Convention should determine whether in this substitute, or this amendment to the amendment, ten years or not it being the highest number the number specified in the substitute. When the Convention had determined that it would have determined so much of the amendment as had reference to the time. The balance of the question then would be open for the determination. It seems to me in looking at it as though it was one of those questions that might be very easily divided; and I especially desire it as I notice during the progress of this debate that almost every one differed in reference to those matters, even those that agree in some things disagree with others in reference to one or other of these propositions. If it can be done I desire to have it.

THE PRESIDENT. The Chair would not have any doubts about dividing so far as striking out is concerned. The division on the number of years, though, the Chair would admit if there would be no objection to it. But there would be grave doubts as to the effect on the readmission by taking the vote on the ten years in this shape.

MR. DERING. It amounts to an amendment, and therefore I object to it.

MR. BATTELLE. A word in reference to this question of order, if you please, sir.

"Any member may call for the division of a question, and it shall be thereupon divided if it comprehend propositions in substance so distinct that one being taken away a substantive proposition shall remain, etc."

I read from the 34th rule. It seems to me that this is clearly susceptible of division and I should like to see it divided that the house may first vote on the proposition to make this officer not eligible for a second term. There does a substantative proposition remain then which reads that he shall serve ten years, or eight.

THE PRESIDENT. The division called for by the gentleman from Preston would have the preference.

MR. BATTELLE. Do I understand the Chair to decide that the suggestion made by the gentleman from Preston would not be entertained?

THE PRESIDENT. The Chair expressed doubts about it but expressed the opinion that it could be put in that way, unless a point of order was raised.

MR. LAMB. I suppose the question is clearly divisible. The proposition of the gentleman from Monongalia certainly involves two distinct propositions, one of which is to insert ten instead of eight, the other is to establish the principle of ineligibility of judges. Very distinct propositions. That I understood to be the division as the gentleman from Preston contemplated to have these questions put separately.

THE PRESIDENT. The Chair will entertain the proposition unless it is objected to.

MR. LAMB. I was about to say, Mr. President, before the argument made by the chairman of the Committee on the Judiciary that I too, concurred in the principles of this report in regard to this point as in regard to most others; but where the principle is adopted in the report and applied in one case the principle should be fairly acted upon in other cases coming within the same reasons. If you will refer to the 11th section of this report, you will find that they have reported there that the judge shall not be during such term eligible to any political office. What is the principle then involved here? It is that you should keep your judges clear as far as possible from political influence. It is that this thing of a judge being a candidate during his term of office, is a dangerous and improper privilege to be conferred upon an officer occupying such a position. Here is the same principle which the committee have applied in other cases; and what I contend for is that the principle should be carried forward to its proper and legitimate application in the case now under consideration of the Convention. It is the declaration of that committee that it is not proper that your judges should be subject to the political influences to which they are necessarily subject if allowed during their terms to become candidates soliciting the favor of those influential men in order to secure their election and get in office. If you are to recur back to

to the report of the committee, carry out the principles of that report to their fair and legitimate result. Why this exclusion existing in one case if it were not applied in the case now in hand, seeking the man and that it is dangerous to subject your judges to such influences? The appeal to the present state constitution which contains this same provision and which as the gentleman said, had been ratified by a large majority of the people, who then ratified this principle among others; and if this principle is thoroughly applied it will apply as much to any case as to the one comprehended in this 11th section. I must confess, Mr. President, that I attach great importance to this principle. I would, if it were possible, place your judges in a situation in which they will not have this temptation before them. If a man without political influence is plaintiff or defendant before them and a man of great political influence is interested on the other side of the case, I would have nothing to prevent them even during the last term holding the scale of justice even, if a man offered a bribe to a judge, even a hundred dollars, you would send him to the penitentiary. But when the judge is a candidate for re-election, influences that are invisible to others may be brought to bear on him that are far more potent and effective than any direct bribe. It is the possibility of such things as this that we want to fortify the judiciary against. I know we cannot make our system perfect. We will have men in office that are not fit for office under any system we can possibly devise. But is that a reason that should prevent us from making our system as nearly perfect as we can? Is that a reason that will prevent us from endeavoring to place these imperfect men in such a situation that there will be nothing to warp their judgment and decisions as far as we can accomplish that object? No, sir. With a conviction that our system, with all the care we can devise, will frequently lead to the selection of unfit men for office, let us still make it as good as we can. That we cannot make it perfect is no reason why we should not make it as near perfect as we have the means of doing. The gentleman from Tyler, who addressed the Convention a short time since in regard to this subject seemed to be very apprehensive that if we did not adopt the suggestion which he made, business would be altogether neglected, while if we adopted this principle of ineligibility the amount of business on the docket would accumulate year after year; and yet he told us that under the present system where this eligibility does exist these evils are peculiarly onerous. Under the former system judges held their offices during good behavior, and

while I was practising at the bar I heard no complaints of this kind. Here at least in Ohio county, I know we had a judge that would work through any quantity of business and with most perfect impartiality. I recollect particularly one instance, in which I was employed in the defence of a man who had committed no crime under your laws, but overwhelming public opinion existed against that individual; and he owed his safety from the penitentiary to the independence with which the judge of that day administered the law according to the facts. That man I believe would have been sent to the penitentiary had his case come before a judge that was a candidate for re-election. I think so far as experience goes —so far as the past may have any influence upon us, that we have every reason to suppose that this accumulation of business will be much better prevented where the judge has not to employ his time in looking out for influence in the securing of his re-election; where he has nothing to look after but the proper disposition of the business which is before him.

It is true, sir, there is an objection to this system of ineligibility; but that objection would be greatly obviated by the suggestion of the gentleman from Wood and that suggested by the member from Monongalia. You may sometimes be deprived of the services of a very competent man; but you will have, I trust, other competent men to take his place; and in order to secure the advantage, which will very seldom be placed within your power by this system, you are called upon to subject your judge to these improper influences. We have adopted the same principle exactly in regard to the election of sheriff, and for the same reason; that it is improper for the sheriff in performing the duties of his office to be looking out constantly to the influences which may be brought to bear on his election at a succeeding term. I do not consider that it is in any respect an invasion of public right. You have a right to say that this man or that man shall not present himself as a candidate to the people. You have no right to say the people shall not vote for any candidates presented they may please. How are these candidates usually presented before the people? Look at the manner in which your nominating conventions are usually constituted. Look at the petty intrigues and petty management which is resorted to to get up these nominating conventions for the purpose of placing one man on the track or the other. These nominating conventions, as they have enlisted heretofore, have effectually prescribed to the people whom they should vote for. And has not this Convention, representing the people, the right to say in

certain cases who shall not be presented as a candidate where a great public good is sought to be obtained by it? What right have you to say the sheriff shall not be eligible on this principle? What propriety is there in saying a sheriff shall not be eligible and yet subjecting your judges if they want a renomination to all the intrigues that are necessary to getting up these nominating conventions in order that they may be placed fairly on the track again? The gentleman from Kanawha told you that this proposition was a violation of the fundamental principle on which our government rested. And yet the gentleman from Kanawha himself is the reporter of the principle involved in the 11th section of this report. If it is a violation of the fundamental principle on which our government rests that the judge should not be a candidate for reelection to the same office, is it not equally a violation of the fundamental principle to prevent the people from re-electing him to another office? Is not the principle which you have adopted in regard to sheriffs as much a violation of the fundamental principle of our government as the principle which is here proposed? It strikes me, Mr. President, it certainly is just as much in one case as in the other. But why in either case is it a violation of any proper and correct principles? The effort to place your judges above the party strifes of the day is not a violation of principle. It is not a violation of principle, the effort to place your judges in a position where they can hold up the scales even and decide with perfect impartiality without being subject to undue influence whether the plaintiff be a man of great political influence or of no influence whatever. It is not a violation of fundamental principles to endeavor to place your judiciary on such a foundation as will secure—if you can secure—as far as possible their perfect impartiality in all cases whoever may be the individuals that present themselves before him.

MR. PRESIDENT. The Chair remarked to the gentleman from Preston that he entertained doubts as to the order of division. The rule furnished by the gentleman from Ohio (Battelle) would govern the Chair; but the difficulty which arose in the mind of the Chair at that time is this: the proposition is to insert "ten" where nothing is yet stricken out and would not be by the motion to divide. If the motion had been carried further it might have been entertained.

MR. VAN WINKLE. Was not the first motion to strike out "eight" and insert "six?" After that, the substitute was offered

by the gentleman from Monongalia; and it was to divide the question on the substitute.

THE PRESIDENT. The Chair thinks it would be policy for the Convention and for the gentleman from Monongalia to permit the division to be made to save time, and yet strong doubts exist in the mind of the Chair as to the propriety of the course.

MR. DERING. I do not desire to occupy the time of the Convention in any way. My object is to facilitate business. If it is thought desirable and it would save time and bring the Convention to a conclusion. I will waive the point of order.

THE PRESIDENT. The object of the gentleman from Preston is to test the sense of the Convention on the ten years.

MR. STUART of Doddridge. Just two or three minutes. I desire to refer to an argument made by the gentleman from Ohio. As there appears to be considerable tenacity about this thing and as it was rather a new argument, and as these arguments have two sides to them, I desire that this thing should come up fairly and squarely. The gentleman says we disqualify these judges from holding political offices. It is true we disqualify them during their term of office; but if you say they shall be ineligible to the office of judge after their first election, then all they have to do in the world—

MR. LAMB. The only portion of that clause which I referred to in the 11th section is the latter clause of it which provides that during his term the judge shall not be eligible to any political office.

MR. STUART of Doddridge. I understand it, sir. That is all true. I understand the gentleman exactly; but now look at the operation of this thing. He is not going to qualify himself for the office of judge—he is not going to make himself a good judge—if he knows that at the end of his first term he is to be debarred from the office. If he is looking for a political office, he will be qualifying himself for that. Now you see how the argument will go.

MR. LAMB. If the amendment is adopted he could not be a candidate for anything, either political or anything else. He would have to go back to the practice of the law.

MR. STUART of Doddridge. "Nor shall he during such term, be eligible to any political office;" but the very moment his office

expires he becomes eligible. You say he shall not be judge. He can take a political office. You are not holding out any inducements for him to qualify himself as judge, to perform the duties of judge; and he has no more motive in the world to qualify himself for that office; but he will be looking to a political post and qualifying himself as a politician. I think that might be the case. Now, I do not know why this should say "shall not hold any political office" at all; and as the gentleman from Upshur remarked that it seemed a long term of office would not make these men good men, I do not know any other way unless you say they shall be excluded after they fill the office of judge one term and be required to render an account at the final tribunal, for it is pretty much saying so to say he shall fill no office, or to say he shall be executed at the end of his term (Laughter). Then, sir, if he is eligible to receive a political office at the end of his term, why, as a matter of course, if he is any kind of a man he will go on electioneering for a political office and qualifying himself to fill it. Now, it does seem to me it will have that effect. I only wanted to refer to that argument of the gentleman from Ohio.

MR. BROWN of Kanawha. I hope I, not more than any other member of the committee, will be held responsible for everything that is in the report; for I desire it to be understood that there was some diversity of sentiment on this report in the committee as well as in this house; and that while I shall not disclose how I voted or how any other gentleman voted, I do not want to father every inconsistency that may be found in the report. My duty is simply to maintain the propositions contained in the report as presented and one word as to the argument drawn from section 11. I desire to say if this construction be correct, that the judge can hold no political office during his term and then the construction be correct that he seeks to introduce into this clause, then we would have that anomaly of a man taking an office which would exclude him from both a judical and political office thereafter during the continuance of his term. It seems to me that would be to preclude almost every man that would have the office at all or be fit for it, and the result would be nobody would have the office. It seems to me a schooling in any sort of calling is the best to fit an individual for it. If you are going to learn to be a village blacksmith you would not go to a silversmith's all your life to qualify yourself for it, or to be a shoemaker to learn to be a tailor. So in this judicial office. I would not go to the politicians for the best judges. I would not go to the

judges for the best politicians; but look for each in their line. Those men whose business and calling leads them more directly to discharge the duties of an office are ordinarily and generally the best school to select from. It is on that account we generally find the judges chosen from the bar. While there is nothing in the laws or constitutions to prohibit any gentleman from holding the position of judge, or any other office, I have never known gentlemen in any of the counties of this commonwealth who professed to be no lawyer running for the prosecuting attorney, or any of the ministry, or doctors or politicians offering to run for the office of judge. The only question is, where will you ordinarily find men whose business and calling seemingly fits them for the office. It may be you will find many superior men at the bar who do not offer for judges. And yet there is no law to exclude them. Where, then, these men having served in this capacity, why at the end of the term should they be excluded more than every other individual, those whose qualifications do not ordinarily fit them at all for the position? There is no exclusion of any other class of mankind from this office. I cannot see, therefore what reason would operate to exclude the one who has discharged the duties faithfully, educating himself, always qualified and competent, with the qualifications necessary in a judge.

MR. LAMB. The provision offered by the gentleman from Monongalia will prevent the judge during his term from becoming a candidate for re-election. The provision of the 11th section would prevent him from being a candidate for any political office. But as soon as the term was over he could become a candidate for what he pleased.

MR. BROWN of Kanawha. Would his term be over if he resigned his office?

MR. LAMB. No, sir, the expression here is different from what I thought it was. I thought it was during the term for which he was elected. The language is his "term of service." His term would be over in case of resignation, of course. That terminates his office. I thought it was for the term for which he was elected. But is just during his term of service. Still while he held the post he could not be a candidate.

MR. BROWN of Kanawha. That is right.

Mr. Stevenson of Wood called for the yeas and nays.

MR. DERING. I desire to say one word, sir, and I do not desire to detain you but a very few minutes. I desire to advert to the argument of the gentleman from Doddridge. He says that he is for the people; that he believes in their intelligence and honesty. We on this side of the question believe, I think, quite as much as the gentleman from Doddridge in the intelligence and honesty of the people. I am sure in that respect there can be no difference between him and us; but I am for the people in this, that when you invest a man with all your rights, your property, your life and character that he should be kept pure and independent of all the surrounding influences which would be calculated to warp his judgment and control him. I am for the people as much as the gentleman and I desire in this to protect the people's lives, their rights, their characters, their property, so that on that score we are equal. I am not for the people in some ways, sirs, but I decidedly am for protecting people in all those great rights, properties and lives they hold. I think in doing that a man will best serve the people, will best protect the people while he protects the judiciary so that the judge in ruling on questions affecting the rights and interests of the people may make his decisions proper and right. Judges are but men; they are liable to be tempted and led astray by the hopes of office. They are human and subject to all the influences that human-nature is subject to. Hence, I am for placing them in an independent position, making them ineligible for an office in their own district at least after they have once occupied it. The gentlemen who have argued this question on the other side seem to predicate and base their whole argument on the principle that we are taking the right of election away from the people. Why, it is not so, sir. That we are creating judges for life. Why, twelve years is not a lifetime of a man by a long ways. You are not taking away the rights of the people; we are permitting them to select their judges and for the term of ten years. Upon that hypothesis they based their arguments. It is not correct. We are for electing them only for a certain term of years and making them thereafter ineligible. There are six or seven states of this Union that elect their judges for life, so desirous are they to keep a pure judiciary, to keep the ermine from being stained by the muddy water of politics and keeping it above the influences that usually surround a candidate for office. I would not be in favor of that principle, but I am for electing them for a specified term of years and then en-

abling them to retire. New Hampshire, Rhode Island, Connecticut, Delaware, Georgia and Florida appoint their judges, or have them appointed by the legislature for life.

MR. STUART of Doddridge. South Carolina.

MR. DERING. South Carolina, I think, elects for four years.

MR. HERVEY. Georgia elects for three years.

MR. DERING. The gentleman from Doddridge says if you elect a man when thirty years of age his term will expire when he is just in his prime. Well, if he made a good judge again, let him go into another district, and if he has been an eminent judge, and we are to have proper and necessary qualifications, he will be called for from other circuits. So that answers the question. If he desires to enter high and important positions he can take them; but he will have made himself so popular by the discharge of his duties properly that he can get almost any position he desires in the gift of the people.

MR. BROWN of Kanawha. I was aware of having said we were scarce of timber in West Virginia.

MR. SMITH. It was the gentleman from Wood.

MR. DERING. The gentleman from Wood.

I am informed by a member of the bar in this hall that Judge Camden was accustomed to work ten months out of twelve. If he were our judge now he would be pretty well worn out by the time he had served ten years. He would be almost totally disqualified for the discharge of his duties. It seems to me it is important in every way that we should throw all the safeguards around this high and distinguished office that it is possible for us to do. It seems to me the rights of the people demand it. We should not get a trifling politician on the bench who would square his decisions to suit the popular favor in order to be re-elected. Let the judiciary be kept pure the office of judge at least pure and independent. I am clearly in favor of making a judge ineligible in one district after having served one term and of electing him for ten years. When his time shall have expired let him return to the people and occupy some other position if he has the qualifications necessary to recommend him to the people.

MR. HERVEY. I merely desire to place South Carolina right on the record; don't want her misrepresented. The gentleman from Doddridge suggested that the judges from South Carolina were elected for life and the gentleman from Monongalia replied "four years." The South Carolina Constitution provides all the judges shall hold during good behavior.

MR. BROWN of Kanawha. That is the old constitution.

Several members called for the "Question."

MR. LAMB. It is suggested by the gentleman from Wood that "good behavior" in South Carolina means four years; that no man behaves himself down there longer than that time.

MR. CALDWELL. Before the call of the house, I do not understand exactly the question before the Convention. I rise merely to say it places me in this position. I am not willing to vote for ten years unless I can couple with it the ineligibility of the person who may be elected judge. I understand the question before the Convention is on the ten years. But if the other branch of the question is connected with it, I might vote "aye" to. I merely desire to call the attention of the Convention to the difficulty that may be met.

MR. DERING. I ask that the question shall be first taken on the ineligiblity feature, and then on the term of years.

MR. VAN WINKLE. Gentlemen will remember that they have no vote on the years. This is a substitute. They can vote on it and then the question will recur on the other.

THE PRESIDING OFFICER (Mr. Hall of Marion). I do not understand definitely the action of the Chair in reference to the proposed division of the question; but on coming to the chair, the President explained to me he had entertained the division. Thus it was I stated the question being on the striking out of eight and inserting ten.

MR. DERING. I had waived the point of order with a view that we should first take the question on the ineligibility and afterwards on the other.

THE PRESIDING OFFICER. If there is no objection, the question will be first taken on the ineligibility.

MR. DILLE. When I asked for a division of this question it was for the express purpose of having the first part of this proposition taken first; and I stated that as the reason why I desired the question divided. If the question is taken the other way, I do not care anything about a division. I shall vote against the whole of it.

MR. LAMB. I hope the vote will be taken on the question of eligibility first. I do not know how to vote on the other question until this is decided. If the judge is to be re-elected I should be in favor of a very short term; and I want the question of eligibility decided, and then I will know how to vote on the other.

THE PRESIDING OFFICER. The Chair in deciding this question would decide that it is not competent of division at all without destroying the preceding amendment, and would decide that the question must be taken all together. If that is voted down any question embracing part of it will be perfectly in order.

MR. VAN WINKLE. It must be divided: the one proposition as that the judges shall be elected for eight years, the other, that they shall be ineligible—these are distinct propositions. Whoever calls for it has a right to it.

THE PRESIDING OFFICER. The opinion of the Chair is that one is so dependent on the other that you must know how you pass on one. That is the decision of the Chair—unless appealed from.

MR. HERVEY. This proposition has got into the present form by two propositions. How could it get in that way if it cannot be got out the same way?

THE PRESIDING OFFICER. If the object of the gentleman is to object to the decision of the Chair, he must do it by an appeal. It will save time.

MR. STUART of Doddridge. I ask for a division of the question, to be taken on striking out first.

THE PRESIDING OFFICER. The division in that form is proper.

The Secretary reported that the motion before the Convention being to strike out "eight" and insert "six," Mr. Dering moved to amend that by striking out "six" and substituting "ten," and to make judges ineligible.

MR. DERING. I call for the question as modified by myself which has been before the Convention: to insert "ten" and make them ineligible to the same office in the same district.

MR. BROWN of Kanawha. I want to see what the striking out is to refer to. Strike out eight. If we are called on to vote on that question it will be to strike out eight. I understand the gentleman from Tyler moves to strike out eight and insert six. The gentleman from Monongalia moves to strike out six and insert ten. But if the vote is now taken to strike out six and insert ten the question on the report of the committee will be a question for subsequent vote if we insert ten instead of six. All I want to know is to be prepared to vote, if the question be on striking out six and inserting ten. If I am voting for striking out eight, then I shall vote against.

The Secretary stated Mr. Dering had moved to strike out six and insert ten.

MR. STUART of Doddridge. We are voting whether we will strike out eight.

THE PRESIDING OFFICER. The amendment to the amendment proposes to strike out what is in the amendment of the gentleman from Tyler—to strike out six and insert ten.

MR. DERING. My original motion—and the Clerk has it there written by me—is to strike out eight and insert ten. You will find that recorded there by the Clerk.

THE PRESIDING OFFICER. The understanding of the Chair is that it was otherwise.

MR. STUART of Doddridge. I recall the call to divide the question if it is to be on striking out six, but I do not understand it so.

MR. LAMB. I will suggest to the gentleman from Monongalia to withdraw his motion for the present and let the question be taken on the motion of the gentleman from Tyler. Whatever the result will be on that question, the motion of the gentleman from Monongalia can then be made and present the question fairly and distinctly.

MR. SMITH. I would suggest to the gentleman from Monongalia to withdraw his motion for the present and vote on striking out the eight and inserting six, and then his amendment will be in order, and the Convention could vote understandingly. It seems

to me the way the question now is it involves some difficulty about voting.

MR. DERING. In order to save difficulty, I will do that, sir, to facilitate voting.

THE PRESIDING OFFICER. The amendment proposed by the gentleman from Monongalia having been withdrawn, the question before the Convention is to strike out "eight" and insert "six" on the motion of the gentleman from Tyler.

Mr. Van Winkle asked that the vote be first taken on striking out "eight." The vote was taken accordingly and resulted:

YEAS—Messrs. Brown of Preston, Dering, Hansley, Hall of Marion, Haymond, Hervey, Hoback, Hagar, Lamb, Mahon, O'Brien, Powell, Parker, Paxton, Pomeroy, Simmons, Stevenson of Wood, Stuart of Doddridge, Soper, Taylor, Van Winkle, Walker, Warder, Wilson—24.

NAYS—Messrs. Brown of Kanawha, Brooks, Battelle, Chapman, Caldwell, Carskadon, Dille, Harrison, Irvine, Montague, McCutchen, Parsons, Robinson, Sinsel, Stephenson of Clay, Stewart of Wirt, Sheets, Smith, Trainer—20.

So the motion to strike out was agreed to, and the vote was then taken on the insertion of "six," with the following result:

YEAS—Messrs. Brumfield, Cook, Hansley, Haymond, Hervey, Hoback, Hagar, Mahon, O'Brien, Parsons, Powell, Simmons, Stevenson of Wood, Stuart of Doddridge, Stewart of Wirt, Sheets, Soper, Taylor, Van Winkle, Walker, Wilson—21.

NAYS—Messrs. Brown of Preston, Brown of Kanawha, Brooks, Battelle, Chapman, Caldwell, Carskadon, Dering, Dille, Hall of Marion, Harrison, Irvine, Lamb, Montague, McCutchen, Parker, Paxton, Pomeroy, Robinson, Sinsel, Stephenson of Clay, Smith, Trainer, Warder—24.

Mr. Dering then renewed his motion, to insert "ten" with the modification in regard to ineligibility.

MR. STUART of Doddridge. I offer to amend that by asking to insert eight, because I voted to strike out eight and insert six; and now I prefer eight to ten.

MR. POMEROY. I hope my friend from Doddridge will not urge that now unless the judge be made ineligible on the long term.

MR. BATTELLE. I feel desirous that the question be divided. I am voting blind without it. I am utterly opposed to the ineligibility, and I would like to have the privilege of voting on that distinctly. I should be constrained to vote against the whole proposition as it stands.

THE PRESIDING OFFICER. Allow me to say that the question was decided just as it struck my mind, not that I had any very well defined opinion, and it would take much less time to decide by an appeal.

MR. BATTELLE. I have no disposition at all to appeal from the decision of the Chair.

MR. BROWN of Kanawha. The gentleman from Hancock suggests a difficulty, that his vote does not express his wishes, and I find myself in precisely the same difficulty on the opposite side. On this question I must say the Convention is voting without a chance to vote its sentiments; and I therefore would much prefer the question of ineligibility should be put distinctly before the Convention and let us vote for or against it. If you determine the judge shall be eligible, then we will fix the time accordingly. It does seem to me that is the first proposition we ought to determine. Like the gentleman from Ohio I think that is a violation of the principles on which we are basing our Constitution; and that I desire to put my veto on whatever form I can get at it; and I do not wish to vote in such way as to be compelled by my vote to do that which I am trying not to do.

THE PRESIDING OFFICER. The Chair seeing the difficulty that exists will entertain the division of the question.

MR. BATTELLE. Then, sir, I call for a division of the question, and that the vote be first taken on the question of eligibility.

MR. POMEROY. I think I see a way I can get out of that dilemma by not voting on this question of eligibility at all. I can be excused by general consent. I hope no person will object.

MR. HARRISON. On that question I believe the 9th proposition in the fundamental provisions provides that every person entitled to vote shall be eligible to any office in the gift of the people. If we stick to that principle I do not see how we can vote against eligibility.

THE PRESIDING OFFICER. I was overlooking the fact that the gentleman from Doddridge had proposed an amendment. He was asked to withdraw but I do not know whether he did it or not.

MR. STUART of Doddridge. I want to see that question—

MR. VAN WINKLE. The Convention has just voted to strike out eight. He cannot move to insert it.

MR. POMEROY. I ask to be excused by general consent.

MR. SINSEL. I want every man to vote.

There being objection the request of Mr. Pomeroy was submitted to the house, and the Convention declined to excuse him.

MR. HERVEY. The question is on the re-eligibility?

THE PRESIDING OFFICER. Yes, sir; on that clause.

MR. STEVENSON of Wood. Would it be in order to offer the number seven now to be voted on?

THE PRESIDING OFFICER. It is in order.

MR. STEVENSON of Wood. Then I propose that.

MR. LAMB. I call for the question.

MR. STEVENSON of Wood. There seems to be a necessity, sir, amongst the members to get a vote on the question of eligibility. I will withdraw the amendment of "seven."

THE PRESIDING OFFICER. It will not affect the question at all.

The Secretary read the pending question: "but thereafter to be ineligible to re-election in the same circuit."

THE PRESIDING OFFICER. That is the question before the Convention.

The vote was taken and resulted:

YEAS—Messrs. John Hall (President), Brown of Preston, Caldwell, Carskadon, Dering, Dille, Hall of Marion, Lamb, Parsons, Parker, Paxton, Sheets, Smith—13.

NAYS—Messrs. Brown of Kanawha, Brooks, Brumfield, Battelle, Chapman, Cook, Hansley, Haymond, Harrison, Hervey, Hoback, Hagar, Irvine, Montague, Mahon, McCutchen, O'Brien, Powell, Pomeroy, Robinson, Sinsel, Simmons, Stevenson of Wood,

Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Soper, Taylor, Trainer, Van Winkle, Walker, Warder, Wilson—33.

So the Convention refused to make the judges ineligible to re-election.

The question recurring on the length of the term.

MR. PAXTON. Is the question now on ten years? There is a proposition now on ten and seven.

THE PRESIDING OFFICER. It is customary to vote on the largest number first.

MR. DERING. I withdraw the number "ten", sir.

MR. POMEROY. Is it proper to make any number we see fit?

THE PRESIDING OFFICER. You are entitled to propose another number.

MR. POMEROY. I move to reconsider the vote by which "six" was lost.

MR. STEVENSON of Wood. I withdraw my motion for the sake of the motion to reconsider.

MR. BROWN of Kanawha. I move to amend the motion and move the reconsideration of the vote striking out "eight."

MR. LAMB. How did the gentleman vote on that question?—against striking it out?

MR. BROWN of Kanawha. I voted against striking it out (Laughter).

Mr. Pomeroy's motion to reconsider the vote by which the Convention refused to substitute "six" for "eight" was agreed to; and the question then being on the substitution of "six" years for "eight" as the number of years for the judges' term, the proposition was agreed to by the following vote:

YEAS—Messrs. Brown of Preston, Brumfield, Dering, Dille, Hansley, Haymond, Hervey, Hoback, Hagar, Lamb, Montague, O'Brien, Parsons, Powell, Parker, Paxton, Pomeroy, Simmons, Stevenson of Wood, Stewart of Wirt, Stuart of Doddridge, Sheets, Soper, Taylor, Trainer, Van Winkle, Walker, Wilson—29.

NAYS—Messrs. John Hall (President), Brown of Kanawha, Brooks, Battelle, Chapman, Caldwell, Carskadon, Hall of Marion, Harrison, Irvine, McCutchen, Robinson, Sinsel, Stephenson of Clay, Smith, Warder—16.

The question recurring on the section as amended, it was adopted.

The Secretary reported the 5th section:

"5. A circuit court shall be held at least four times a year, unless otherwise provided by law, made in pursuance of section 3, by the judge of each circuit, in every county wherein a circuit court is now or may hereafter be established. But the judges may be required or authorized to hold the courts of their respective circuits alternately, and a judge of one circuit to hold a court in any other circuit."

MR. VAN WINKLE. I believe there was a portion of the 4th section not acted on. The motion made was to adopt the whole section. That seems to have been the understanding. I do not know myself what the fact is.

THE PRESIDING OFFICER. The Chair not having the report before him cannot say.

MR. VAN WINKLE. Unless the vote is called for, there is no use of taking it over.

THE PRESIDING OFFICER. If there is any desire that the vote should be taken on the second and third sentences, it will be entertained; if not, the vote taken on the section will stand.

MR. BATTELLE. Mr. President, I do not want to adopt it, and do not care—shall be content with just a simple vote, but I feel disposed to make the motion to strike out "thirty-five" and insert "thirty" as the minimum age of a judge.

THE PRESIDING OFFICER. The proposition is to amend the second sentence of the 4th section, in the 45th line, by striking out "thirty-five" and inserting "thirty."

MR. SINSEL. Just strike out the "five."

MR. BATTELLE. Yes.

MR. BROWN of Kanawha. This is a mere question of discretion. Some men may be as well qualified at thirty as others at thirty-five; but take the general run of men who have attained that

experience that qualifies them for the bench I think you will find a much larger number of them at thirty-five than thirty. Very few lawyers are prepared to practise law at twenty-one and an experience of less than ten years is not safe in selecting a bench. I think the time adopted in the report is decidedly preferable and will be found much safer, and especially when we have diminished the number of years there ought to be some other securities.

MR. LAMB. I would merely remark that thirty appears to be the time almost universally adopted in other constitutions. It is the time fixed in our own constitution. According to my information in regard to the matter if a man is not lawyer enough at thirty to make a judge, he never will be.

MR. BATTELLE. I would just say one word, and that is that I think the greater latitude you give the people in these matters the better it will be for them in our peculiar circumstances in some sections of the new State. I might say, sir, that though I do not know whether Gen. McClellan would make a good judge or not he makes a good commander of our armies. This rule as it stands here, if I am not mistaken, would exclude him from a judgeship, provided he lived here.

The question was taken and the motion lost; and the remainder of the section, and the section as a whole, adopted.

The question recurred on the first sentence of the 5th section.

MR. VAN WINKLE. I would call the attention of the chairman to one word. In line fifty, instead of "now" say "hereby." I do not think the word "now" is proper.

MR. BROWN of Kanawha. That is intended to refer to the operation under this Constitution. I had not observed it. Yes, sir, it ought to be "hereby."

I do not propose to suggest any modification of this section only as to that word "hereby." It will be perceived that this section provides for the number of courts to be held in the several counties shall be four in each year. There might be some doubt as to whether that is too many in the minds of some, of others perhaps too few. I do not know what would be the sense of the Convention. My own impression is, however that experience will find it will be all that can be held, owing to the extent and character of much of the country to be traversed by the judges in some parts

of the State. It is also provided that the number of these courts may be increased or diminished and the circuits altered as experience may show to be advisable or necessary.

MR. STEVENSON of Wood. I do not propose to offer any amendment, at least not now; but I wish to ask for my own information, not being very well acquainted with these judicial matters whether it would not be better to lessen the number of courts that shall be held in a year, as there is ample provision made by which the number can be either increased or diminished by the legislature.

MR. SINSEL. It cannot be done for five years, though.

MR. STEVENSON of Wood. "Unless otherwise provided by law." I do not think this third section has reference to the number of courts.

MR. SMITH. Yes, sir, it does.

MR. STEVENSON of Wood. Only the re-arrangement of the districts.

MR. SMITH. And the courts also.

MR. STEVENSON of Wood. That it is considered then it might be well enough to retain that if it is thought the four courts are really necessary in some of the districts. My impression was that that would probably be too many for some of the districts; that two or three courts might probably be sufficient, to do the amount of business. I merely wanted to inquire myself, to be satisfied about the matter.

MR. BROWN of Kanawha. It will be seen by reference to the section that after five years the legislature may increase or diminish the number of circuits, and the number of courts in a year as necessity may require, thus leaving it to the legislature as a question for their discretion as they alone may determine. There is in the second sentence of this section another provision where the judges may be required or authorized to hold the courts of their respective circuits alternately and the judge of one circuit to hold the court in any other circuit. Much necessity has been found for that provision. A judge is elected and finds there is scarcely a case on the docket he has a right to hear; that is he can preside in nothing that is on the docket because in almost every case he happens to be retained on one side or the other as counsel. The

necessity therefore of this part to exchange and let one come and discharge the duties while he goes to another circuit.

The first sentence of section 5 was adopted.

MR. BRUMFIELD. I move we now adjourn.

MR. BROWN of Kanawha. I would suggest to the gentleman—

MR. BROWN of Preston. I was about to remark I do not understand very clearly the sense of this sentence: "but the judges may be required or authorized to hold the courts of their respective circuits alternately, and a judge of one circuit to hold a court in any other circuit." Now I can very well understand the judges may alternate, but how the courts will alternate I do not understand. Perhaps light will not be thrown on the subject by the additional language including the sentence, but I would propose to strike out all after the word "authorized" and insert this: "alternate with each other in holding their respective courts." Then it would read "but the judges may be required or authorized to alternate with each other in holding their respecting courts."

MR. VAN WINKLE. Would not it be better to say "the judges of two contiguous circuits" might do that? In the old constitution they were divided into districts and the districts into judges; and then the judges of two districts might alternate. But this would imply that the whole of the judges of the State might alternate.

MR. BROWN of Preston. I have no objection to accept the suggestion of the gentleman from Wood.

MR. SMITH. I should prefer the power to be general, because as it now stands they must exchange in four circuits, whereas judges may only wish to change two or three counties. The amendment proposed would authorize an exchange for one or two, three or four counties wherein the other cannot hold.

MR. VAN WINKLE. As this will evidently require some consideration and probably by morning the chairman would be glad to suggest something in the language which does not seem to be explicit, I move we adojurn.

The motion was agreed to and the Convention adjourned.

XXXVII. FRIDAY, JANUARY 24, 1862.

The Convention was opened with prayer by Rev. J. M. Powell, member from Harrison.

MR. DERING. I hold in my hand a petition signed by Judge Miller and a large number of the loyal citizens of Monongalia county, which I will ask may be received and laid on the table.

The petition, signed by 103 citizens of Monongalia county, prayed the Convention to insert in the Constitution a provision prohibiting the legislature from appropriating money for internal improvements, and also a provision limiting the per diem of members of the legislature to thirty days after the first session.

Laid on the table.

THE PRESIDENT. When the Convention adjourned, it had under consideration the second sentence of the 5th section of the report of the Committee on the Judiciary. The question is on the adoption of the clause.

MR. BROWN of Kanawha. Last night I took the trouble to get a constitution of the state and compare this latter sentence with the provision in the constitution and I think it will not be found to be obnoxious to any objections that might have been supposed to exist. The provision there is that the judges of the districts—two circuits constituted a district—might be authorized or required to hold their respective courts alternately. We have no districts, and therefore it was necessary to strike out the word "districts" and make the sentence apply to the judges generally, and it is the more appropriate. What is the object of requiring these judges, or giving the legislature power to require them, to do this? I understand the whole Constitution is predicated on the fact that the people of each circuit are to elect their own judge and the judge elected by one people is not to be the judge of another people without some necessity arises for it. But it also provides, looking to the fact that there will sometimes be a necessity for a change from inability of a judge to act in his own circuit that judges may be required to alternate, and it is proper there should be in the Constitution a general provision, for you cannot tell what judge is going to be in this position. If you say the neighboring judge, perhaps both may be under the same kind of disability. I think the Convention will see the propriety of adopting this clause.

MR. BROWN of Preston. I last evening suggested an amendment to the language in this clause; but upon a careful examination I find the language embraced here is probably as concise and answers the purpose as well as any that could be substituted. The propriety of requiring the judges to alternate with each other both in their courts and circuits is manifest. It may so happen that in one circuit the business may be very large and the labor connected with it very great, while the business in another circuit is very light. In cases of that kind, sir, the propriety of this clause is very manifest. The legislature may authorize or require the judges to alternate in circuits so as to lessen the labor—exchange with each other so as to equalize the labors of the judges, not impose all the labor on the judge of one circuit. I shall support it just as it is.

MR. RUFFNER. Perhaps it may be hypocritical, but I see no necessity for the word "But" in this connection and move to strike it out.

MR. BROWN of Kanawha. I think if my colleague will look at this he will find it necessary. Each judge is assigned to the circuit to which he is elected, and whenever you make him go out of his circuit you change his duty, and there must be a reason assigned for this additional duty, and that is intimated in the word "But."

THE PRESIDENT. Does the gentleman from Kanawha withdraw his motion?

MR. RUFFNER. It is a matter of no consequence. I thought it was superfluous and still think so. I withdraw it.

MR. HERVEY. By the structure of this latter clause are inhibited, as I understand it, from exchanging unless authorized of record. They cannot do so unless authorized of record. I would move to strike out the latter clause and insert: "the judge of any circuit may exchange with the the judge of any other circuit," without waiting on legislative enactment.

MR. BROWN of Kanawha. The gentleman's amendment proposes to make this matter discretionary with the judges of the circuits they will sit in and for which they were elected. Under this kind of provision a judge may select a circuit different from that in and to which he was elected without any authority of law. Now, that I am opposed to. I understand when these judges are elected under the Constitution, that they are not and ought to be allowed

to change at their discretion without some reason existing and that that ought to be a matter regulated by law. The legislature alone must be the body that from year to year and from time to time, as circumstances arise and indicate a necessity, can declare and prescribe it. To give the matter into the hands of the judges is, I think, departing from the principles on which we have been acting. I am in favor of the clause as it stands.

MR. HERVEY. It seems to me there would be a necessity for the existence of a case of this kind. A judge may have a case before him in which he is personally interested or in which he would feel a delicacy in acting. Now, it does seem to me it would be a great hardship to require him to act in such a case. The case might arise before there could be any general legislative act that would authorize the exchange. We know under the present constitution judges frequently exchange, and it is very frequently the interest of parties that they should exchange. Without a provision of this kind they cannot do so; and even under a general law they might not be able to do so so as to satisfy the necessities of the case that might arise.

The amendment proposed by Mr. Hervey was rejected, and the section adopted.

The Convention proceeded to the consideration of section 6:

"6. The Supreme Court of Appeals shall consist of three judges, any two of whom shall be a quorum. They shall be elected by the voters of the State and shall, at the time of their election, be at least thirty-five years of age. They shall hold their offices for the term of twelve years, unless sooner removed in the manner prescribed by this Constitution."

MR. BROWN of Kanawha. This section provides for the number of the judges of the court of appeals. That number is fixed at three; which may be regarded perhaps as a very small court, yet as large as the committee thought advisable in this State. It is difficult to reduce it below that number and yet circumstances would not allow us to go beyond that. In the present boundary of the State there are now only two of the judges of the court of appeals. We are therefore increasing the judiciary in that particular one judge. To have less than three it would be difficult ever to come to a decision, with one on one side and one on the other. That may often happen anyhow in having a quorum of two; but is one of the difficulties which cannot be avoided unless you increase the court to

four, which would cause some difficulty again by having two on each side. The Convention has endorsed the age of thirty-five and might not be disposed to change it with regard to this court. The judges of courts of appeals are generally expected to be men of greater years, larger experience and more knowledge of law than those elected for the circuits. The labors of the court of appeals it is known are upon matters of record exclusively, but they determine the law for all the citizens of the State. Therefore it is that greater time is necessary and greater deliberation, and few are the causes for decision. They shall be elected by the voters of the State. In this there is another and new principle asserted here. At present under our constitution the judges of the court of appeals are elected by the districts, there being, I believe, in the state —six or seven, I don't know which—that constitute the number of the court of appeals; each of which districts elects one of the judges. Inasmuch as the State we will have is greatly diminished in size it is proposed to increase the number of judges in that area and it was thought most wise and prudent to make these three judges elective by the people at large in the whole State. Inasmuch as they do not come from any particular locality it will be their duty to act on the cases that come from all parts of the State. Their duties and labors are the things in which every citizen of the State is alike interested. Therefore it was highly proper their election should be made by the people at large.

There is another advantage that is urged—perhaps very justly so—in favor of it, that in having the whole state at large to select from, you are not confined to select your judge from some particular locality, where you might not be able to find a competent man, but having the whole State you can command the best merit in the State. It is a consideration that is not to be lightly cast away or disregarded.

Those are the distinctive ideas that are contained in the first and second clauses. The other provides for the term, twelve years, one over which we have had much discussion in relation to the circuit judges. What may be the wishes of the Convention in that respect I am not able to determine; but one thing I feel convinced of that the term of twelve years for the supreme court is a very short term. The labors and duties assigned to this court are those of a scholar in seclusion. These judges have little or nothing to do with the people—ought, in fact, to have as little to do with them as possible. Their duties should be peculiarly to discover the truth in the trial of causes, and to deliver an opinion which

not only settles the law as between the parties in the case but which determines it for all the people of the State. Longer experience and greater ability are more likely to be secured by the longer term, because the men who go upon this bench bury themselves to the world almost forever.

MR. POMEROY. I think very likely there will be amendments offered to this section, and therefore I move that the first clause be adopted.

The motion was agreed to.

The question recurring on the second sentence, it also was adopted without amendment.

MR. HAYMOND. I move to strike out "twelve" and insert "eight."

The motion was rejected.

MR. POMEROY. I move to strike out "twelve" and insert "ten."

The amendment was rejected.

MR. STEVENSON of Wood. I move to strike out "twelve" and insert "nine."

MR. LAMB. I ask for a division of the question, whether "twelve" shall be stricken out or not.

MR. BROWN of Kanawha. Is it in order after we have voted down a higher number and a lower one, to insert a middle number?

THE PRESIDENT. The Chair is of opinion that they might test the house with any other number.

MR. STEVENSON of Wood. I call for the yeas and nays.

MR. SOPER. In the organization of this court, I think it is safe for the Convention to reserve to the people the same supervision. If from any cause it should result in the inefficiency of one or more of its members. By adopting this term of nine years and then a clause that one of their number shall be elected every three years, we will hold a control over the competency of that court so that we can make it what we contemplate it should be. I am therefore in favor of the amendment and hope it will be followed up by another one so as to classify these judges and have one of them elected every three years.

The vote was taken on striking out "twelve" and the Convention refused to strike out by the following vote:

YEAS—Messrs. Brumfield, Cook, Hansley, Haymond, Hervey, Hoback, Hagar, O'Brien, Parsons, Powell, Pomeroy, Stevenson of Wood, Stuart of Doddridge, Soper, Van Winkle, Walker, Wilson—17.

NAYS—Messrs. John Hall (President), Brown of Preston, Brown of Kanawha, Brooks, Chapman, Caldwell, Carskadon, Dering, Dille, Hall of Marion, Harrison, Hubbs, Irvine, Lamb, Montague, Mahon, McCutchen, Paxton, Robinson, Ruffner, Sinsel, Simmons, Stephenson of Clay, Stewart of Wirt, Sheets, Taylor, Trainer, Warder—28.

MR. LAMB. I would inquire of the chairman of the Committee on the Judiciary whether there is any objection to a provision for classifying the three judges so that one may be elected every four years?

MR. BROWN of Kanawha. No, sir; I have no objection. It is a matter that never occurred to the committee, and I was struck with the force of the suggestion when it was mentioned to-day.

MR. LAMB. Then I would offer the following:

"Of the judges of the supreme court first elected, one shall hold his office for four years, one for eight years and one for twelve years, so that thereafter one shall be elected every four years."

I suppose under a provision drawn this way, they would be elected in this way and the tickets would designate the time for which each candidate was elected for.

MR. SINSEL. The usual way is to classify them by law. Elect the three for twelve years and they classify themselves by law.

MR. LAMB. The people might have some preference.

MR. SINSEL. Just elect the three judges and let them classify themselves by law.

MR. LAMB. Well, this contemplates that the people should determine; but I have no particular objection to the classification by law. It struck me this would be the simplest way to get at it.

MR. HERVEY. How is it possible to carry out that amendment? How can they determine which is elected for four, which for eight and which for twelve years?

THE PRESIDENT. How would you do it?—Say the largest vote has the longest term?

MR. LAMB. There is no difficulty. The people would write or print on the ticket the name of one man for four years, another man for eight and the other for twelve. I have no objection to the other way if gentlemen prefer.

MR. SOPER. I suppose the more satisfactory way would be for the judges themselves to determine by lot or agreement. The legislature will undoubtedly provide for it. That, I believe, is the usual and better way.

MR. HALL of Marion. I understand this proposition to elect the judges by the State at large: let it be provided that the man who has the most votes is for the longest term, and so on; and thus the people will determine who shall have the long and the short terms. I much prefer that to adjucating them by casting lots.

MR. HERVEY. I prefer the suggestion of the gentleman from Tyler. This is the plan adopted by the Senate of the United States. When a state is taken into the Union and senators are elected, they qualify and decide who shall have the long term by lot. The proposition of the gentleman from Marion might possibly be liable to this objection: two might have the same number of votes. That is possible—not very probable.

MR. SINSEL. Mr. President, the way I would have them classified: of those first elected, one, to be designated by lot, shall remain in the office four years only, one other to be designated in like manner shall remain in office eight years only the other will remain for twelve years, of course. You will find this as in document No. 1, section third.

MR. BROWN of Kanawha. I would ask the Clerk to report the provision in regard to the senate. I want to see the language adopted there. I think that might very appropriately be applied here, making the language run through consistently.

MR. LAMB. I would suggest, if there is any difficulty in determining the mode that we act on this proposition, and then an amendment can be inserted to determine the way in which the judges shall be classified.

MR. BROWN of Kanawha. I see no objection to the mode suggested by the gentleman. I think it is very well provided in the

mode determined for the senate and that it would be well to keep up the form in the Constitution by using the same language precisely in relation to judges as in relation to the senate.

MR. LAMB. I have no objection to determining the classification in any language that gentlemen may prefer.

The Secretary read the provision adopted by the Convention for classifying senators as follows:

"The senators first elected shall divide themselves into two classes, the first being designated by lot in such manner as the senate shall determine, shall hold their offices for one year, and the second for two years; so that after the first election one-half of the senators shall be elected annually."

MR. BROWN of Kanawha. I believe I prefer the plan suggested by the gentleman from Marion. It is the most simple. I offer that as an amendment.

MR. DILLE. I prefer the amendment as proposed by the gentleman from Ohio. It seems to me there can be no difficulty in determining this matter. We let the people designate at the time they elect these judges whom they propose to elect for twelve years, whom they propose for eight and whom for four years. It seems to me that is the better way of determining to let the people do it at the polls whom they wish for each term. I think there would be less difficulty connected with it than in the mode proposed by the gentleman from Marion, from this fact that they might all of them get the same number of votes. If you leave the matter to the people, they can determine it; and if they have preferences, they can give them expression.

The Secretary reported Mr. Brown's amendment to Mr. Lamb's amendment, that the term depended on the vote received by each candidate, the highest vote the longest term and so on.

MR. SINSEL. The Convention for the last day or two, it seems to me, have been doing all they could to prevent judges from electioneering as much as possible, and this will hold out a strong inducement at the very first election to go round electioneering with all their might to see which will get the biggest vote. Now, will not this be much better:

"Of those first elected, one, to be designated by lot, shall remain in office four years and one other to be designated in like manner, shall remain in office for eight years."

Well, then, it gives judges in some localities this advantage over others. For instance, there was two men running in this end of the district where the population is much more dense: they might absolutely be inferior men; but the one running where the population was more sparse—well, these men in here would naturally receive the largest vote while the best man in all probability would only serve for four years.

MR. HAGAR. There is an idea suggested to my mind that it would not be fair to let the foremost have it twelve years, and so on, for this reason: the man who lives in the largest population is in that district, of course would get the most votes, because there is the most got in that district. It will be the case, of course, according to that man's election for twelve years is sure and so on down. I go again the amendment to the amendment on that ground.

THE PRESIDENT. Is the gentleman aware that the whole State will vote together on these elections?

MR. HAGAR. Well, that will not make it any better than to elect the three judges and let them divide by lot. It has been the common rule in such cases, so far as I have been able to judge in the past.

MR. HALL of Marion. There can be no greater hardship or more injustice in that mode than there will be in the fact that one man who may not get enough to elect him at all is not elected. It certainly is a fair way of getting an expression of the people whom they will farthest trust. No difficulty at all.

MR. STEVENSON of Wood. I think I do see some difficulty in the matter suggested by the gentlemen who oppose the amendment offered by the gentleman from Marion in the respects which they have mentioned; and I think myself probably the Convention will see that difficulty on a little reflection. Besides, the practice generally adopted, I believe, in most of the states, at least the working of such states as I am familiar with, is the practice of deciding these matters by lot. It would seem there should be some good reason for a practice which has become general. We have adopted this principle as far as relates to matters of this kind in our Constitution so far, that of deciding the different lengths of the terms of office of senators, I believe, by lot. That is another consideration, to keep up a uniformity of action in reference to such matters

in our Constitution. I think we had better settle on the plan of letting these judges select by lot.

MR. HERVEY. Suppose three judges running for the long term receive nine-tenths of the vote of the State and there is but one-tenth of the votes cast for two of the three judges. Don't you see what an inequality would result? Suppose there was half a dozen candidates running for the long term and nine-tenths of the votes of the State was cast for those three judges; it leaves but one-tenth to be distributed among the other two. They may be elected by one-tenth.

THE PRESIDENT. The Chair would remark that it would make no difference as the three highest on the list would be the judges whether they were running for the long or short terms.

MR. HERVEY. Not according to the proposition of the gentleman from Ohio.

I see a difficulty in the matter pointed out by the gentleman from Brooke; and I am willing to accept, to avoid that difficulty, the amendment proposed by the gentleman from Tyler, and propose my amendment in this shape:

"Of the judges first elected, one to be designated by lot, in such manner as they shall determine, shall hold his office for four years; one to be designated in like manner, for eight years; and the other take twelve years; so that thereafter one shall be elected every four years."

MR. BROWN of Kanawha. I withdraw the amendment proposed by me.

MR. LAMB. I would remark that if the matter be determined by the vote, and the best men ran only for the twelve-year term, we should lose the services of two of them, since only one could be chosen. Under the amendment first suggested by me, there would be three distinct offices to fill. You might have all your best candidates running for the twelve years term and no candidates of that grade for the eight-year or four-year terms.

The amendment as just offered by Mr. Lamb was voted on as one proposition and was adopted.

The question recurred on the section as amended.

MR. VAN WINKLE. I will offer, to come in after "thirty-five years of age," the following: "but no person shall be eligible who

has not served at least three years as a judge of some circuit court."

MR. SINSEL. It might be impossible to get a court.

MR. VAN WINKLE. I believe I will have to withdraw it. You may not make the first court. There is too much "secesh" in this country (Laughter). I had the future elections more in my mind.

The section was adopted, and the Secretary reported the next:

"7. The Supreme Court of Appeals shall have appellate jurisdiction only, except in cases of habeas corpus, mandamus, and prohibition. It shall have no jurisdiction in civil cases when the matter in controversy, exclusive of costs, is less in value or amount than two hundred dollars, except in controversies concerning the title of boundaries of land, the probate of will, the apportionment or qualification of a personal representative, guardian, committee, or curator; or, concerning a mill, road, way, ferry, or landing, or the right of a corporation or a county to levy tolls or taxes; and except in cases of habeas corpus, mandamus and prohibition, and cases involving freedom, or the constitutionality of a law."

MR. VAN WINKLE. I would like the chairman to inform us how far it differs from the present constitution.

MR. BROWN of Kanawha. I desire to say that the change the Convention have made in the first section seems to necessarily demand a change in the whole structure now of this section. The first section presented the whole judicial power to the legislature, to be disposed of by law as the legislature saw fit in appropriating it to the various courts that are established by the Constitution. By the change that was made in that section, the whole judicial power of the State is transferred directly by the Constitution to the courts.

MR. VAN WINKLE. Is it not the concluding sentence of the first section which provides the jurisdiction shall be prescribed by law, and that so far as this is concerned by this Constitution is retained, is it not?

MR. BROWN of Kanawha. Yes, sir; but now this section has been altered by this Convention and now the judicial power of the State is presented to these courts, and the question therefore arises now how far your legislature can confer the jurisdiction. Upon consultation with Judge Harrison on this subject last night, though I have not had an opportunity of consulting the committee, I have

drawn this change in the language of the section to meet this case:

"The Supreme Court of Appeals shall have original jurisdiction in cases of habeas corpus, mandamus and prohibition. It shall have appellate jurisdiction in civil cases where the matter in controversy, exclusive of costs is of greater value or amount than two hundred dollars; and in controversies concerning the title or boundaries of land, the probate of wills, the appointment or qualification of a personal representative, guardian, committee, or curator, or concerning a mill, road, way, ferry, or landing, or the right of a corporation, or a county to levy tolls or taxes, and also in cases of habeas corpus, mandamus and prohibition, and cases involving freedom or the constitutionality of a law. It shall have appellate jurisdiction in criminal cases wherever there has been a conviction for felony or misdemeanor in a circuit court. It shall have such other appellate jurisdiction in civil and criminal cases as may be prescribed by law."

MR. BROWN of Kanawha. The Convention will perceive that under the structure of this section, the Supreme Court of Appeals shall have appellate jurisdiction only in civil cases above an amount specified and has original jurisdiction by inference, because it is not expressly stated. It has original jurisdiction by inference in cases of habeas corpus, mandamus and prohibition just as the circuit courts have on the same subjects. Habeas corpus is that writ which secures to all men their freedom when illegally detained. It is considered of high importance that that writ should be of original jurisdiction in both courts. These are the only cases in which those writs have original jurisdiction and properly belong to the highest tribunal. Again, the writ of prohibition—that is a writ which commands an inferior tribunal not to do a thing which it is attempting to do and has no right to do. So it will be preceived at once that these three writs are the highest writs known to the law and properly belong to the highest tribunal, and is the means by which that highest tribunal commands and controls the inferior tribunal to compel it to do what it ought to do when it places a measure to prohibit it from doing what it ought not to do. That high writ belongs to every freeman who is illegally detained without authority of law. It entitles him to be speedily brought into the proper forum and confronted with his accusers.

The great jurisdiction, however, that belongs to the supreme court, however, is: "it shall have appellate jurisdiction in civil cases" and in other subjects detailed. In regard to the appellate jurisdiction in habeas corpus, etc., it is necessary to have this as well as original, because if a man should be brought on a writ of

habeas corpus before a circuit court and his rights denied, it becomes proper that the supreme court should have appellate jurisdiction from the circuit court for the remedy which the appellant might have demanded of the supreme court in the first instance. In cases "involving the constitutionality of a law," here is an addition. By the present Constitution of Virginia there is no prohibition. You have a criminal appellate jurisdiction in the court of appeals, an appellate jurisdiction in criminal cases in Virginia was in the general court, which was a court created by law, not by the constitution, and was held by the judges of the circuits when they all assembled together at the capital once a year. When that court was abolished the necessity of conferring that jurisdiction somewhere was apparent. That was done by law and the jurisdiction of the general court is, by a statute of the state conferred on the state court of appeals. Therefore, when we undertake in this Constitution to define the authority of this court of appeals you are obliged to give it the appeal jurisdiction which the court of appeals now has, but to find out which you have to go and find what the jurisdiction of the general court was; and to do that you have got to range through the whole decisions of the commonwealth from the earliest history to the present time. Then this provision I have inserted to cover that criminal appellate jurisdiction: it shall have appellate jurisdiction in criminal cases wherever there has been a conviction for felony or misdemeanor in a circuit court. "It shall have such other appellate jurisdiction in civil and criminal cases as may be prescribed by law." The latter clause being thought necessary because it is not likely. In the wit of man you could set down and define the jurisdiction of the general court in any set of words and not find out you had omitted something. I believe, however, convictions in cases of felony and misdemeanor will cover every species of crime known to the laws of Virginia.

MR. VAN WINKLE. The word "treason" you get in there. Treason is almost always named in most of these constitutions.

MR. BROWN of Kanawha. I have no objection to the insertion of it. Then the following clause, "It shall have such other appellate jurisdiction in civil and criminal cases as shall be prescribed by law" is a mere safety-valve for fear you have left out something in the Constitution without giving the jurisdiction to this court. If you should find you have not provided for this appellate jurisdiction, then you have no remedy and would have to go

back and alter your Constitution to meet the necessity. A criminal jurisdiction here is only proposed to be given an appellate jurisdiction from the circuit courts—none direct from the justices of the peace to the Supreme Court of Appeals. In every instance the appeal must be first from the magistrate to the circuit court and an appeal from the circuit court to the supreme court in criminal cases.

In the first clause of the first section of this report the Convention have determined that all the judicial power of the State is to be vested in these courts that are named. This makes it necessary for the Constitution to apportion that. You have provided in the section preceding for the jurisdiction of the supreme court. Now, let us dispose of the jurisdiction of the circuit court. I have done this in these words:

"The circuit courts shall, except in cases confided exclusively by this Constitution to some other tribunal, have original and general jurisdiction of all cases at law, where the amount in controversy, exclusive of costs, exceeds twenty dollars, and of all cases in equity, and of all crimes and misdemeanors, and of all controversies concerning the title or bounds of land, the probate of wills, the appointment or qualification of personal representatives, guardians, committees or curators, and concerning mills, mill dams, roads, ways, and ferries, and in cases of habeas corpus, mandamus and prohibition, and cases involving freedom, or the constitutionality of a law, or the right of a corporation, or of a county, or of the supervisors thereof, to levy tolls or taxes.

The circuit courts shall have appellate jurisdiction in all cases, civil and criminal, wherever judgment has been rendered by any inferior court or other tribunal, or by a justice of the peace, except that no appeal, writ of error, or supersedeas shall lie where the judgment is rendered by a justice of the peace, in assumpsit, debt, detinue or trover, and is for less than ten dollars.

And the said circuit courts shall have jurisdiction of all such other matters as shall be prescribed by law."

If there be any case not covered by that, I am at a loss to discover it.

I will move the adoption of the 7th section as far as it is confined to the jurisdiction of the court of appeals as a substitute for the 7th section as it stands in the report of the committee, the object of which is to embrace precisely the same subject with the addition of the criminal jurisdiction, etc.

MR. VAN WINKLE. I think the section as the gentleman now

presents it is an improvement upon the other even if the change had not been made that he adverts to. It is, at any rate, more specific, and I think will be less liable to misinterpretation. I am therefore decidedly in favor of it as a substitute for what is here. As a mere matter of language, the first sentence might say they should have both original and appellate jurisdiction, but that is rather a matter for the Committee on Revision. I am in favor of expressly giving the appeal in criminal matters as he has it there, and I may say I decidedly prefer it. I suppose it could be open to amendment in minor particulars, though I am not disposed to change it. In that respect I think in reference to the smaller nature of our transactions in amount I think that two hundred dollars would suit us less than five hundred did under the old constitution. The object would be to give an appeal in all cases that you could give them; and I know the fact that one reason why the former court of appeals was crowded so was the jurisdiction of five hundred dollars. I believe I would be in favor of the section as a whole.

The Presiding Officer (Mr. Caldwell in the chair) stated the question to be on the substitute offered by Mr. Brown. The question was submitted and the substitute adopted.

MR. BROWN of Kanawha. Then I would move as an additional section this, to cover the jurisdiction of the circuit courts:

"The circuit courts shall have original jurisdiction of all cases in law and equity, and of all crimes and misdemeanors not confided exclusively to some other tribunal."

That simply determines that wherever the Constitution has not given exclusive jurisdiction to some other tribunal that this circuit court shall have original jurisdiction of the subject of the matter. It may be concurrent unless it is exclusive.

MR. VAN WINKLE. I was going to ask the gentleman from Monongalia who raised that question two or three times when we were on the justices of the peace, and I constantly assured him it was intended to prevent a concurrent jurisdiction. It may be for consideration further whether that concurrent jurisdiction is to go down to one dollar, or one cent. I would suggest fifty dollars.

MR. BROWN of Kanawha. I do not fix any amount. I think it ought to be twenty dollars, as the constitutional limitation for a jury. It might be amended then in this way:

"The circuit courts shall have original jurisdiction of all cases in law and equity over twenty dollars and all crimes and misdemeanors not herein confined exclusively to some other jurisdiction; and they shall have appellate jurisdiction in all cases civil and criminal wherever judgment has been rendered by any inferior court of justices of the peace to—"

There it will have to be limited again above ten dollars, as I understand the proposition in regard to justices' jurisdiction is that no appeal is to be allowed below ten dollars. I will so alter this.

MR. LAMB. I would ask the chairman of the Committee on the Judiciary to consider this proposition, whether the circuit courts should have original jurisdiction in cases involving the right of a corporation or county to levy tolls or taxes and involving the constitutionality of a law, whether the amount involved in the particular case may be five dollars or twenty dollars. I have seen in cases of this character, when I was practising law, a fifty-cent case which involved the most important rights perhaps of a municipal corporation. And in reference to that same difficulty, it strikes me the right of appeal from a justice of the peace ought to be modified. The right of appeal from a justice is now restricted rigidly to a case where the value involved between the two parties shall exceed ten dollars; and although the value in question in that particular case may not exceed ten dollars, the case itself may involve the right of a corporation or county to levy tolls and taxes and the real question decided may settle the matter involving a hundred thousand dollars. So far as the decision of the justice of the peace may affect the right of a corporation or county to levy tolls and taxes, or may involve the constitutionality of a law, it strikes me it ought to be able to appeal without reference to the amount involved in the particular case.

MR. VAN WINKLE. I certainly should have no objection to making that alteration in the articles or sections in reference to the jurisdiction of justices of the peace if the constitutionality of a law comes into question or where the right of a corporation to impose tolls or taxes was involved. It certainly is not the proper tribunal to decide it as the last resort; but I would suggest, on the other hand, that cases of that kind, even if they originate with justices of the peace, might be allowed to go from there up. But I should like to mention here an incident in the history of another state, the facts of which were brought to my attention by a dis-

tinguished lawyer who was afterwards a member of the court of appeals of that state—and I do not know but he is now. When the State of New Jersey established, or revised, its system in reference to justices of the peace—my impression of the jurisdiction was then a hundred dollars—I believe it is one hundred and fifty now—but what ever it was—they provided that the appeal would lie direct from the justice of the peace to the court of common pleas, from that to the circuit courts and from them to the supreme court. They had no court of appeals, of that name, at that time. He told me that for the first two or three years the docket of the supreme court was crowded with these appeals from the justices of the peace, so that other business was hindered and interrupted; and he suggested that Chief Justice Pennington—the father of this Pennington whose name we are more familiar with, who was one of the broad seal members of New Jersey and was a few years ago Speaker of the House of Representatives. He, at that time, chief justice of the state, sat down to write a book, which he called "The New Jersey Justice," in which he brought in all those questions that had been determined in reference to the jurisdiction of justices of the peace—in reference to the practice before justices of the peace. He incorporated all these decisions in his book, adjusting them and arranging in such way as to make them very easy of reference. This gentleman told me that after that there was scarcely such a thing heard of as an appeal coming from the court of common pleas. I believe that appeal went then from the common pleas to the circuit courts precisely as they come here from a justice to our county courts formerly: that is to say, the whole case went up and another jury was had if it was a jury case.

I would suggest that cases of the kind indicated by the gentleman from Ohio should have a further ventilation if the circuit courts do not decide them to the satisfaction of the parties. I would suggest to the chairman of the committee, if he desires it, whether it would not be well to pass this by until the afternoon session and give him leisure to draw it up in such way as to embrace suggestions that have been made. It would not prevent us considering subsequent sections; and the gentleman would then have time in the dinner interval—I do not know whether it would give him any time, either.

MR. BROWN of Kanawha. I very fully concur in the suggestion of the gentleman from Wood. I had drawn this which I will read

for the consideration of the house though I adopt the suggestion of postponing this to the afternoon or tomorrow morning.

"The circuit court shall have original jurisdiction of all cases in law and equity where the amount in controversy exclusive of costs exceeds twenty dollars, and of all crimes and misdemeanors not herein exclusively confided to some other tribunal, and appellate jurisdiction in all cases civil and criminal in which judgment has been rendered by any inferior court or justice of the peace, except that no appeal in such cases shall be allowed where the judgment is for less than ten dollars."

I confess very candidly that in thus attempting a limit there is great danger there may some cases arise that you have not covered, and that suggested by the gentleman from Ohio may be one of them. My further impression is that a justice of the peace would not have jurisdiction of that case. Therefore those clauses giving this court both appellate and original jurisdiction of everything not exclusively confided to another tribunal would secure these courts' jurisdiction.

MR. VAN WINKLE. The language might be to give them jurisdiction from justices of the peace. We changed it in the other. You could take that and change it in a few moments if it was necessary. Let it be passed by, and if the gentleman is not ready with it this afternoon he can bring it in the morning. He will have more time for reflection on it himself and can arrange it better.

By general consent, further consideration of section 7 was deferred, and the Convention proceeded to consider section 8, which was reported by the Secretary:

"8. When a judgment or decree is reversed or affirmed by the Supreme Court of Appeals, every point made and distinctly stated in writing in the cause and fairly arising upon the record of the case, shall be considered and decided, and the reasons therefore shall be stated in writing and preserved with the records of the case."

MR. BROWN of Kanawha. In regard to this section I desire to say that it is a new feature in our Constitution and to my mind is one of very great importance. To the lawyers the question is more familiar from this: A trial is had before the circuit court and a verdict is rendered; the exceptions are taken in the course of the trial and rulings of the court made. For instance, say ten exceptions are taken upon as many distinct several propositions of law. Those exceptions are preserved and the case is decided,

and the party taking those exceptions against whom the judgment was rendered takes an appeal to the Supreme Court of Appeals. It may, as the law now stands, turn out that every one of those exceptions may have been well taken; that the opinion of the judge was wrong in every single one of the ten rulings. The reversal of them may involve a fundamental principle which would forever settle and determine the case; and yet the court of appeals can reverse the judgment on some incidental matter that passes observation; some quirk; some defect in the petition some clerical error, which is a defect when discovered but never was discovered before. On this the court of appeals can adjudge the decision all over again made in the case and upon which the case turned, and return it back to be retried without any enlightenment on the principles involved. And then the party is put to the necessity of going all the way back to the court below to have all these cases tried and determined.

The object of this is to require the court of appeals to decide every case that is fairly stated in writing on the record and arises properly out of it, so that when the case comes back to the circuit court the judge may there have the judgment of the supreme court on all points of law that arise in the case and know what he is doing and save the party the second trial. A similar provision is in Kentucky, and I first became acquainted with it there, where they found the same difficulties and where they provided that their supreme court should decide every point that is made fairly in the record; and if there are fifty of them they shall be all decided and determined, whether when the case is once adjudged by the supreme court or finally.

There is another amendment I propose to this growing out of the provision of our present constitution requiring that the reasons for the decision of the court of appeals shall be stated in writing; to state to the judge in sitting the matter of the argument, why he decides so and so. The result has been under it that it is bringing down the judges; that every judge is writing a book in every case almost. Reports of the court of appeals are becoming so voluminous that they are a burthen; and that by getting such elaborate arguments before the judge in the cause, all different to some extent you have confusion worse confounded. So that it is a burthen. I have therefore proposed to avoid that difficulty by inserting that the reasons shall be stated "concisely and briefly." The object is to get the substance of it and not have a book written in every case. I think the amendment is both necessary and proper.

MR. VAN WINKLE. I concur in the remarks of the chairman of the committee. I have had more than one case in which I was concerned go to the court of appeals after being elaborately argued in the circuit court, and then again elaborately argued before the court of appeals involving no question about which even the judge of the circuit court was in doubt about but decided so that the case would be sure to go up because he thought it necessary the highest tribunal should pronounce upon it; and when it got up there some little flaw was found in it and was decided on that ground and the public none the wiser and the lawyers of the inferior tribunal had no guide by which to go in future cases.

I should be in favor of the section, I think, as it is reported.

The amendment was agreed to, and the question recurring on the section, it was adopted.

The Secretary reported section 9:

"9. Special courts of appeals, to consist of three judges may be formed of the judges of the Supreme Court of Appeals, and of the circuit courts, or any of them, to try any case, or cases, which may come before the Supreme Court of Appeals, in respect to which any of the judges of said court may be so situated as to make it improper for him to sit on the hearing thereof."

MR. VAN WINKLE. I wish to offer an amendment, if I may anticipate the chairman a moment. I think the creation of this special court of appeals under the former constitution was owing to the immense accumulation on the docket of the old court of appeals; and I do not think that starting afresh here we should create a special court of appeals. I have been endeavoring to suggest a matter. I have written it here hurriedly:

"When any judge of the Supreme Court of Appeals is so situated in regard to any case pending before it as to make it improper for him to aid in the trial of the same, or is any other disability, the remaining judges may call to their assistance a judge of the circuit court who shall act in the Supreme Court of Appeals in the case to which such disability relates."

MR. BROWN of Kanawha. I do not perceive any great objection to the amendment proposed by the gentleman from Wood. It to all intents and purposes constitutes a special court and leaves the judges to determine the necessity of it instead of the legislature. The section as it is here is copied from the constitution as it now

stands substantially, and is a mere provision, knowing it would often happen that some of the judges of the court of appeals could not sit and try causes before it because some of them will be found to have been counsel for clients whose cases will come up to them. The necessity was then to have somebody that could try them, and one advantage in having a special court of appeals is that those cases after they are tried by the special court are hardly ever regarded as authority. The law of the case is determined as between the two litigants and there settled forever, but the decision of it is regarded as of little authority because it is as called only for that occasion. Well, that to some extent must be the case where cases are tried by some special court of the kind suggested by the gentleman from Wood.

MR. VAN WINKLE. It is to be the court of appeals, no matter who sits on the bench. If one judge is unable to attend they invite the circuit judge to come and sit there.

MR. BROWN of Kanawha. Suppose they were all three so situated that they could not try a case? It may very easily happen.

MR. VAN WINKLE. If they were all in that condition, it would still be the court of appeals.

MR. BROWN of Kanawha. By the amendment it would, be a court of appeals, and yet composed of not a single judge of the court of appeals, and therefore would not have the weight without the men to give it weight. I do not feel very particular about it. Both are efforts to accomplish the same end, and either will accomplish the end.

The vote was taken on Mr. Van Winkle's substitute, and it was adopted.

The 10th section was reported:

"10. Judges shall be commissioned by the governor, and shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office. The salary of the judge of the Supreme Court of Appeals shall not be less than two thousand and five hundred dollars and that of a judge of the circuit court not less than two thousand dollars, per annum, and each shall receive a reasonable allowance for necessary travel."

MR. HERVEY. I move to insert "or increased" after the word "diminished" in the first clause.

The amendment was agreed to and the first sentence thus amended was adopted.

MR. BROWN of Kanawha. Mr. President, the section follows pretty much the same provisions as are in the present constitution except the salaries of the judges of the court of appeals are reduced from three thousand to twenty-five hundred dollars. The distinction in the opinion of the committee between the labors of the two offices and the responsibility attaching to the two being as here indicated, rather than as indicated in the former constitution, by the salaries affixed to the offices. I do not know whether it is the intention to take vote on the salaries of these two courts at the same time or separately. We have two different classes of officers to deal with.

THE PRESIDING OFFICER. I would suggest taking the salaries of the supreme court judges first.

MR. BROWN of Kanawha. I have only to say this on that subject, that the salary of twenty-five hundred dollars for judges of the court of appeals, in the opinion of the committee, is the lowest amount to which they believed these salaries could be reduced and at the same time secure that learning and ability that this bench ought to possess. Its importance is understood by everyone when it is considered that it sits not merely to discharge questions of right between the two individuals who are litigants but that its decisions are to become the law of the land, to govern and control all other litigants in like cases. Further not that this court is to fix the law simply but the judges who compose it must have the learning and ability and the integrity to deliver the law as it really is. For they are not to make the law, but declare the law; and their declaration is the final declaration of it; that when it is done, it should be so done as to certainly do justice to the parties in the trial but give satisfaction to the people; because whenever the people are dissatisfied with their supreme tribunals, then they lose at once their regard and esteem for the laws of the land and for the tribunals that deliver them; and to strike at that is to strike at the foundation, because in a republic whenever the people lose their regard for the laws and tribunals of the country, then the government cannot very long exist; they are then tending rapidly towards either anarchy or monarchy. The great modern idea is, was announced by the gen-

tleman from Logan the other day, that in this country the law of the land rules supreme.

MR. VAN WINKLE. That is the theory; not the fact.

MR. BROWN of Kanawha. It is a law which is mandatory on the people; it is the supreme law that is the government, and it is the authoritative declaration of that law that this tribunal is to make. It is therefore one of the most important, one in which every citizen has a deep interest—a peculiar as well as general interest. I think, therefore, it will be found in securing the parties proper and requisite to conduct this office as it is expected to be done that the salary allowed is the lowest that ought to be fixed.

MR. POMEROY. I move to strike out the words "not less than." I do not believe in a sliding scale. Let us know that the salary is fixed when we go before the people so we can tell them exactly what the salary is.

MR. SINSEL. Mr. President, I have some objections to this section. It is true we are considering one part now, but at the close we find another clause allowing mileage. Now before the salary we determine upon here, I hope the Convention will fix it so that the country will know exactly what we have to pay. If twenty-five hundred dollars is not enough without mileage, why add what is necessary and fix it so there will be no slip either way. But I think myself without mileage $2500 is a pretty big fee, big allowance. You will recollect a few days ago here it was advocated that the makers of the laws, the legislators ought not to have over three dollars a day, and it was so provided. This was advocated by the gentleman from Kanawha, who now says more than double that ought to be paid to the interpreters of the law; that the man who interprets the law ought to have more than double the man who makes the law. Well, I can see no reason for that. I am opposed to little contemptible allowances; but, at the same time, I am opposed to exorbitant prices. It was advocated also here that the honor and so on was something to be considered in legislation. Why not equally something in the interpretation of the law? It is more honor to be a judge than to be a representative; and if you should forfeit him all the emoluments for the honor to be a representative, why should not you lose something to have the honor of being a judge? Now the representative, suppose he was elected for a whole year, to receive his pay for a whole year, would only receive $1095 a year. The judge who is to give his whole services would receive

$2500. Now, in order to test the sense of this Convention, I will move to amend the amendment of the gentleman from Hancock by fixing the salary at $2200. Two hundred dollars will pay his traveling expenses and then he can draw a thousand semi-annually, and I think it is a pretty liberal allowance.

MR. POMEROY. I would prefer the vote on this amendment be taken and then let the gentleman offer his. Let the sense of the Convention be taken on this matter, that we will fix the salary definitely; and then when he makes his motion to strike out $2500 and substitute $2200 we have a definite proposition.

MR. SINSEL. If you will make it to include $2500, I have no objections.

MR. VAN WINKLE. This has no relation at all to the amendment proposed by the gentleman from Hancock. We are constantly embarrassing ourselves in this way.

MR. SINSEL. I will withdraw the motion for the present and let the Convention vote on his.

MR. LAMB. The amendment of the gentleman from Hancock necessarily involves the striking out of the words we have already adopted in the first clause—that the salary shall not be increased or diminished during continuance in office. If we fix the salary at $2500, those words, of course, must be stricken out or they will have no effect whatever. As to the ability of the legislature to change it, the gentleman from Hancock will recall the force of the provision we have already adopted. After the office is full the salary cannot be changed. The legislature could not increase it. So it only applies after the termination of the offices of the incumbents, whoever they may be. Then before the office is filled, if the legislature shall have found this to be inadequate let them have the right to act according to the lights which are then before them. This is a very small matter in one aspect of the case but a very important one in another. We have three judges of the Supreme Court of Appeals; and even if the plan as suggested by the gentleman from Taylor be adopted our saving will be $900 a year, while we may run the risk of reducing the salaries so low that you cannot fill the office with any except a set of pettifogging lawyers that would be a disgrace to the position and in whose decisions and rectitude the community would have no confidence. The risk we run is out of all proportion, it strikes me, to the saving that can be effected by a measure of this kind.

THE PRESIDING OFFICER. I understand the question to be the striking out of those words, not upon the amount.

MR. LAMB. Well, with the provision which has been adopted, attached to your first clause, that the salary is not to be increased during the continuance of the party in office, I do not see that the amendment of the gentleman from Hancock will have much to operate upon. We can only operate in this case. During the existence of the first term of office, if the legislature should find by experience that the salary was inadequate, it might prevent you from profiting by the results of that experience. I think you may leave this matter to the legislature. There will be in the legislature members who will be disposed to make motions of this kind in order to carry out the impression that they are the peculiar advocates of economy. But if the legislature finds the exigency does exist, leave them at liberty to act as they may have found by experience it is necessary that they should act in order to secure the proper constitution of your court of appeals. A great deal, gentlemen, will depend on that. A great deal will depend on having judges in your court of appeals in whom your people will have full confidence and judges who will do honor to the office.

MR. POMEROY. I deem a word of reply necessary. I do not wish to stand before the world with any particular tenacity as the advocate of saving to the people; but I want to go by principles that are right, and act consistently throughout. And, gentlemen, that is the very thing. I do not want the legislature at the end of ten years to say the judicial salaries are too low. I say there is not even a possibility of $2500 not being enough. I only say I do not want this sliding scale. If it was to be. I would prefer to insert the words, "not more than $2500." But we are as well competent to decide that matter as the legislature will be as long as the world stands. Let us say it shall be a certain amount—what we believe to be right and not leave this sliding scale. I want these three words stricken out. If it is wrong for the legislature to run salaries up, let us say so. If they believe they ought to run them up they can vote for this provision. What I want to settle is that it shall be a fixed amount.

MR. VAN WINKLE. The question presented, as I understand it, is simply, shall the Convention permanently and positively fix the amount of the salaries of these judges—for while the principle applies to the circuit judges as well as the court of appeals, shall

the Convention permanently and positively fix the amount or leave the legislature at liberty to act upon it under any circumstances whatever. Most certainly if I thought the Convention would attach an adequate amount of salary to the office I should be in favor of the legislature being deprived of any power to act upon it. I hope or expect to have something to say on this subject when the amount of salary comes up. My inclination is to admit the amendment of the gentleman from Hancock in reference to both classes of judges because I would keep the two departments of the government—legislative and judicial—as far apart as possible. I do not wish to have one in the power of the other in any way. I would suggest another difficulty. Let us suppose this salary is too low and you fix it that it shall not be increased or diminished during the term of service. Suppose the first judge goes out at the end of four years, and in the meantime, why, the legislature have provided for an increase of salary, or a diminution, what is the consequence? Here you would have one judge receiving a higher salary than his fellows, and they would resign and then we must have the whole election over again. It strikes me in case of these other provisions the Convention had better fix these salaries permanently. I want to say I am in favor of getting adequate salaries but I wish them to be fixed permanently so the judges will not have any favors to expect from the legislature and I believe that it will be better that it is so. If there was any reason why these salaries should be fixed at a very low rate—which I do not perceive, however—it might be that the legislature might be authorized to raise them when better times come. But I apprehend that we will not give a salary that will admit of much diminution at any time, and unless we give higher than is named here, we certainly are not. I am in favor of the amendment for the reason stated.

MR. BROWN of Kanawha. The objection of the gentleman from Hancock to the section as it stands, as I conceive, is a distinction without a difference; it effects nothing. I regard a salary fixed here as the minimum. The legislature will never venture to raise it a dime. We have lived under the present constitution for ten years with this clause in it precisely, and they have never attempted to increase the salary; and very certain it is that had they done so, one universal hue and cry would have scared half the legislature to death. That is to say, not exactly the extinction of animal life; something of political. So that the simple question of raising or diminishing—or raising it—is not changed

in my opinion by the amendment proposed. It might have effect, however, on the subsequent part of that sentence which I regard material and proper: "and each shall receive a reasonable allowance for necessary travel." Judges are supposed to perform that universally in the discharge of their duties of office, so far as concerns the labor of discharging and determining the questions before them; but inasmuch as it is, suppose they will not always live exactly in the same town but that they will go from various sections and that some will be nearer the capital and some farther from it; some will have a railroad to travel on and some a mud road; some by steamboat, some horseback, to get to and from the capital, and that their travel and expenses will be unequal, it is only fair that each should be paid for his necessary traveling expenses. Now I understand that when members of the legislature are paid a per diem, they are equal in that respect; that it is not thought at all unequal, that members coming from different parts of the State, by different means of travel, different distances and conveniences and inconveniences, that this should be equalized by a compensation based on the distance traversed—mileage. This is simply to indemnify for the time, the expense, the fatigue and risks of travel. The gentleman from Taylor will permit me to remark that I distinctly stated when the pay of the legislature was under discussion that I regarded three dollars as no pay to any man who was fit to be a legislator, and any man who went to the legislature for the purpose of making money out of his office ought not to be allowed to go there. I stated that I understood and expected that three dollars a day would about pay a man's expenses while attending to a public duty and that he worked for nothing. I think so still. When I serve in the legislature, I am content to take that amount to meet my expenses.

THE PRESIDING OFFICER. Bear in mind there is a proposition made by the gentleman from Taylor.

MR. BROWN. Very well; I will defer to another time to notice that. I think it is best to let this stand as it is.

MR. STUART of Doddridge. I am opposed to striking out the words the gentleman has indicated; but I am willing, for one member of this body, to experiment a little; and if by experience we find the salaries too low to command the services of our best men, I think it ought then to be in the power of the legislature to increase these salaries and it will affect my vote very materially on

the salaries that are proposed. If they are too inflexible, I shall be compelled to vote to make them pretty large; but if you will let us experiment some, try a reasonable salary and leave it in the power of the legislature to enlarge the salary if it be found too low to command the services of our ablest men.

The question was taken on Mr. Pomeroy's motion and it was agreed to.

The question recurred on fixing the salary for the Supreme Court of Appeals.

MR. SINSEL. I moved that we fix it permanently at $2200. It has been argued here over and over again that in order to get the best men we must have a large salary. I will admit that is more desirable. But let us look back a few years. I recollect very well in our county, the circuit in which I lived, of which Judge Duncan was the judge. Some members of the legislature got a little crusty with him and they concluded they would so legislate as to throw that man out of office, cause him to resign, get rid of him in some way; and although he had a large district, more labor to perform probably than any judge in the state, yet in order to carry out their plan towards him they got up in the legislature and made an effort to include other counties in his circuit and add additional labor to him. Well, what was the result? Why he felt incensed at it and resigned his judgeship. He was then receiving $1500 and traveling expenses. Immediately, sir, the best lawyer that was in Virginia, now one of the court of appeals, applied immediately. The governor of the state appointed him at $1500 per annum—Judge Lee; the best lawyer in the whole western part of the state, and not excelled by any in the state. There we have a practical illustration of the best material in the whole country went immediately for the position at a salary of $1500. I do not now recollect what the court of appeals got at that time; but you will always find the best material willing to accept these positions. How often do we see the best material in the whole country seeking position in the legislature? What is it for? So far as my experience has gone, it is that they might do a public service and leave a name associated with the service of their country. If we pay this officer before us $2200, he will probably live one-third, perhaps one-half, his time at home. If there are three courts held in the State he will surely be one-third of his time at home. Well, the $200 will pay the additional expenses. Then he will receive the net sum

of $2000 for his services. If he has only a moderate family he can save $1500 of that unless he just goes and spends it any way. I know very respectable families that live on $500 a year. But let him go, even half of it, twelve years; he would save $12,000 net—a pretty handsome sum, and I assure you the best lawyer will accept it. Add to that the honor, which is no inconsiderable consideration. So I am in favor of the $2200.

MR. HAYMOND. I move to amend the amendment of the gentleman from Taylor by inserting $2000—to strike out the $500. It appears to be the opinion of gentlemen that we cannot get the best men unless we give a large salary. That is not my opinion. I am satisfied the best men in this State can be had for $2000 and a little less. In looking over the proceedings of the Legislature of Ohio, I see some years ago the judges of the supreme court got $1800. Well, at a time when everybody thought they ought to have large salaries it was increased to three thousand. But I see now, sir, there is a bill before the Legislature of Ohio to allow them only $2000. They have seen the $3000 was too much and $2000 a plenty. I have no doubt we can employ the best talents in this State at $2000. Men like to be judges. I am therefore, sir, for reducing their salaries to $2000. I think there will be no difficulty in obtaining the best men. I am in favor of offices hunting the men to fill them. I am opposed to politicians hunting offices and salaries. I wish to see a new era started in this country. I therefore, sir, am for low salaries. This government has been nearly ruined by high salaries for the last five or six years. Salaries have been increased both in state and general governments. What has been the cause of it? Rebellion throughout the land has taken place of peace. But for high salaries, sir, I have thought it best to go in for low salaries and our country and our country's cause.

Mr. Brumfield called for a division of the question—vote on striking out first.

MR. VAN WINKLE. Merely a division on striking out and inserting. Probably the best way. As I insisted the other day, the costs that are taxed in the bill of costs are not the whole expense of a lawsuit. So I say now, the expense of this court of appeals does not consist in the salaries of the judges and clerk. What an institution of that kind is to cost a people will depend far more on the purity and business tact with which the business of the court is transacted than on the amount of a salary you pay the judges. If

you get into that court men of competent abilities, men of industrious and business habits in their profession; men who will thus go on and do business and decide cases, the saving to the community at large can hardly be calculated. If, on the other hand, you get some of those gentlemen whom the gentleman from Taylor seems to think it would be well to have there—who go there for the office, or the honor of it, or the pay of it—who take a small sum—much less than they could earn in their profession—the business of the court will be delayed, the decisions not relied upon by the bar when they get them—why, sir, the court of appeals may cost you a great deal more than you can calculate.

In reference to the sum proposed: there has been some whispering around that I was trying to make myself pass for the friend of the people. It may shock some of my good friends, but I just want to make the remark that I think the people are a little too stingy for their own good (Laughter). I have some knowledge of what it costs a man to live, particularly what it costs a man to live who has got to have his brains at work on something much more engrossing than dollars and cents. I should have been disposed to raise this salary above the amount the committee have fixed; but in the present condition of the state and people, believing the consequences of this war would be felt not only for the present but for several years to come, I am willing to leave it at the amount fixed by the committee. I have had some experience with living on salaries—some experience of maintaining a household in this western part of the State. I think I speak understandingly upon all these points. I have something to govern me, and though I do not intend to detain this Convention with minute calculations, yet I think the sum proposed by the committee is as little as ought to be tendered to a judge of so important a tribunal. In the first place, the amount is less than the gross earnings he would be able to make as a lawyer. This will be the judge's gross earnings and he will have all his expenses to pay out of it. He will have to buy books for his own use to keep for his use at home, and some other expenses such as a practising lawyer has, and after that is all paid he will not have as much as the net income of an industrious lawyer in good practice in the City of Wheeling, in Charleston and perhaps other points in this State. In these places living is higher, and this court of appeals will have to be held at the capital of the State, I suppose, or some other prominent place where the price of living very rapidly counts up. This judge, if he has a family—as I hope he will have—for that is some security for him, for his family

has to be maintained at home. There is his household, all his household expenses going on. If he rents a house, the rent is to be paid just the same as if he was there with his family; got to maintain his table, his household furniture and everything of that kind precisely the same, and then he has to pay his board at a hotel, and probably a costly one, when at the seat of government. Now, these are considerations that some attention ought to be paid to. The question is here, not how much a man can live on—that ought not be the question. Everybody in this world that I am acquainted with looks to laying up a little, to make some provision either for his old days or for his family. If his family are young, they are destined to be more expensive as they grow older. A man going into business, if he does not, with due industry and economy have something saved at the end of a year, has very little inducement to continue in business. If he is a man who is willing to live just from hand to mouth rather than exert himself, he is not a man calculated to conduct an important business or to sit on the judicial bench. You want a man of more energy and industry of disposition than that amounts to. This salary is reduced from your present constitution, and circumstances in the west have so changed within the ten years as to make a salary of the description that was given there under an average. I believe they made the judge of the Richmond court a salary higher than the others because living there was more expensive. When the price of wheat per bushel at Richmond was one dollar it was 60 cents at Parkersburg. All our property was valued at about the same proportion. You might take a farm with the same quality of land in the same repair precisely the same style of buildings and every other. That farm there might be worth ten thousand dollars; here probably six thousand. At that time the Baltimore & Ohio Railroad had not penetrated to this state, nor, of course, the construction of the Northwestern Virginia Railroad commenced. But the effect of connecting those works with the Ohio River has been to raise the relative prices of property in the west, and I apprehend if the price of wheat is one dollar at Richmond it will be at least 80 cents on the Ohio River. Just about the difference of transportation. Well, if this is true then the cost of living here has increased since this constitution under which we are now living was made thirty-three per cent; and I think the experience of gentlemen will bear me out in it that it is much more costly to live here now than ten years ago owing to the very fact that we are deriving that benefit from these railroads which have brought up western prices nearer to

eastern. It is decidedly a benefit to us, but when we come to draw the money to pay for things we must realize that it takes just that much more to go around than it used to. Twenty-five hundred dollars may have been a high salary for a judge of the court of appeals ten years ago, but the indications are it would be no more than proper at this time; and so of other judges. They cannot live now on what they could at the time Judge Duncan was receiving $1500. Nor does any man suppose the $1500 was an inducement to Judge Lee, who was a wealthy man. The office was one he felt himself peculiarly qualified for. His mind was one of those peculiar minds adapted to the judgment of causes, and he desired to go into the office. The salary was fixed beyond his control; he could make no bargain; he could take it or leave it; and being well off and desirous to fill such a position, and the sequel abundantly illustrated that he had great fitness for it. I hope that we are all agreed in everything that has been said here upon the importance of a good judiciary. Gentlemen should remember that it is the highest court in the State. This court of appeals is going to give character to your judiciary from the highest to the lowest. I do not care, according to a suggestion I made this morning, appeals should go even from your magistrate up to the court of appeals or whether they stop at the circuit courts, still in the same way the court of appeals will give character to the whole judiciary of the State, to some extent at least. If that court is fitted as it should be by getting good and able judges, men who have devoted their nights and days to the study of law until they can see through all these intricate cases that are constantly going there and give rules of action for the circuit courts; and if you can obtain such men there —if you could insure it—I was going to say ten thousand dollars apiece would be no object.

But now the question arises here, can you induce men in the vigor and prime of life to serve for the small sum you propose? A man's mental faculties may remain until he is eighty; but his physical powers will fail. We fix the junior age at thirty-five and from that to sixty-five you have him in the prime of his intellect. Can you ask men of capacity and experience to give you the best period of their lives for a compensation of perhaps not more than one-tenth what they could earn in that period in the practice of their profession? If you want such men you must hold out some inducement—you must make it a business by which they can live. The difficulty with men of that character, whose minds are constantly intent on some intellectual problem is that they seldom have

the faculty of accumulating money. There are various considerations, sir, that all lead up to the same conclusion, but I will not trouble the Convention with any more remarks on it at this time; but if they will take my experience and the result of my reflections on this subject for anything—if they believe me—I will not be for giving these gentlemen one dollar more than I thought was perfectly just and for the highest public interests. I would at least leave this salary as the committee have fixed it. Most certainly, at the first blush, if I had been a member of that committee, I should have proposed $3000; but if the Convention are willing to come up to this, I am willing to come down to it and leave it where the committee have placed it. I think, sir, the $900 proposed to be saved by the motion of one gentleman and the $1500 by another is no such great consideration; in fact would not be saved, but would be better invested in better salaries for better judges than you can get for the meager pay proposed. Economy does not mean the saving of money; it means the judicious investment of it so as to get the result you seek.

MR. DERING. Mr. President, I am opposed to striking out the sum already fixed by the committee. The people of Monongalia instructed me generally on the subject of making a cheap an economical government, and I am in favor of that as a general principle; but while they desire me to give what weight I can towards that object they do not wish me to be economical at the expense of justice. It does seem to me we ought to give an adequate salary to the judges of our courts; that it is cheaper in the end, as the gentleman from Wood has just argued and that it will promote the ends of justice better by securing the best talents in the State for these important offices. Stinginess and extravagance are the two extremes. It seems to me in putting down the salary of the judges of the supreme court to a very low figure you cannot secure the best talents of the State, because there is scarcely any lawyer of a high order of talent that cannot make more than double that much at his practice. But while there is some honor attached to the position, honor is no compensation to a man where he must suffer in his pecuniary affairs to such an extent as some would make him by putting his salary too low. In Monongalia our county court costs us from $12,000 to $15,000 per annum. We have abolished that court and inaugurated a system to take their place. The salaries of the judge of the circuit courts will not amount to near as much as the expenses of the different county courts in the counties would

have amounted to. There is a great saving of money there. Let us not be too penurious about this thing. Let us give such salaries as will command adequate talents, men who will confer honor on the bench by giving right interpretation of the laws and carry them out promptly. I shall therefore oppose the amendment to strike out, and agree to the committee's report.

MR. STEVENSON of Wood. I believe I shall favor the amendment made by the gentleman on my right (Mr. Haymond) and do so for many of the reasons which have been urged against doing so. If I could be convinced that $2000 would not secure the services of good professional men to occupy the position of judge of this court, I should either favor making the salary higher or leaving it with the legislature to run up to any amount even as high as $10,000, which has been suggested here, in order to obtain the services of such persons. But I do not think that is the case. I am very well persuaded in my own mind from a great variety of circumstances in the history of this country in the past that a salary of $2,000 a year will secure probably as good legal talent as the new State can turn out. I recollect that the argument was used in reference to the pay of Congressmen, that in order to secure the services of talented representatives of the people, and of the states in the Senate, it was necessary to make a very large salary; and to give not only a large salary but incidental expenses to an almost incalculable amount; to give in addition to this salary the franking privilege, by which a member of Congress could send home a cartload of books to his constituents every day and if he saw proper make the people pay for it. The result of one of these abuses has been that Congress itself has seen the futility of such arguments and are beginning to retrench and abandon these abuses of expending the public money by the abolishing of the franking privilege and I hope it will be followed by a reduction of the salaries of members of Congress as it ought to be. A less salary, probably less than one-third of the amount paid to members of Congress at the present time secured the services of Daniel Webster and Henry Clay and John Adams, and a host of others I could mention, with whom there is probably but few men in the present Congress who will compare in point of ability. These men were willing to devote not only a session of Congress and a whole lifetime of fidelity to the people for a small recompense. It is true, so far as my observation goes in reference to the judgeships in the different states, I have seen men of excellent legal abilities, I might say of

superior legal abilities, occupying judgeships for $1500. So that I think as a matter simply of experience, as a question of practice the evidences are as strong in favor of moderate salaries as in favor of very high salaries. I am not in favor of reducing the amount too low but I am opposed to this principle of extravagance either in the state government or any department of it, or in the general government or any department of it. It is one of the crying sins of this time—extravagance of men in public office in squandering the people's money through high salaries and all the other processes of muniment.

But to come more directly to the question. We are to look at this now differently from what we look at it at other times and under different circumstances. Now it is an important consideration. If we are to fix these salaries in the Constitution we must consider the circumstances which surround the people of this new State at the present time. And we must also consider the circumstances which will surround them five, ten, fifteen or twenty years hence. What are the facts in the case? We are bringing this Constitution, this new State into life in the very midst of revolution. Are the people of this State affected by this revolution? Most unquestionably they are—in all their affairs in all their motives in life, the industry of the country the mechanic arts, the great agricultural interest. In fact, in every respect and interest the people of this new State are affected adversely, for that is the rule, by this civil war raging in our midst. That being the case it becomes the duty of this Convention to fix the expenditures of this new government with respect to that condition of circumstances, because it will not merely be an evanescent and short-lived state of circumstances. These circumstances will extend and affect these great interests of this State for many years in the future before the industry of the State can recover from the stroke it will receive in every department of that industry. Years will elapse in the history of this new State. That is a very important consideration. And I hold there is another principle here that is a correct one. I think the salaries attached to these public offices should bear at least some proportion to the recompense which is received by the labor performed. I am aware that that ought not to be a strong rule of obligation. I do not say you should take the standard of what is paid to men in other positions to make as an unbending standard to measure the amount. But circumstances will dictate that the recompense of men in public life should be higher than that of men in the gainful occupations. It does seem to me they

should bear at least some proportion to the recompense received in other positions or occupations. You may take the mechanic. He serves three, five to seven years to learn his trade; and if that mechanic becomes proficient in his craft or trade, I mean, of course, those trades that belong especially to what are properly termed the mechanic arts—if he applies himself for this period to acquire a knowledge and proficiency in that particular branch of industry it requires as much expenditure of time and as close application as is required in acquiring even a knowledge of the profession of law. That large class of our citizens after they have undergone this servitude and acquired this knowledge are compelled to give their labor for from three hundred to eight hundred dollars a year and to get that amount they must work 52 weeks every year. If they work less than that their pay will be less in proportion. Take a larger class, the farmers, they will be for a long time the largest class in this new State—probably forever. The history of this class of men, particularly for the last three or four years, if men would study it, would develop the fact that they have not even made a scanty living as a general thing off their farms. Their industry has perished just about as they were about to realize it. A good wheat crop has been destroyed in almost every part within the boundaries of this proposed State. And it is likely to be so for a number of years to come. That class of men have not realized, I believe, even a dollar a day for their labor, for their industry, for their expenditure for their enterprise; and yet they have labored long and assiduously through the heats of summer and the frosts of winter. I would urge it on this Convention not to saddle a class of people who have been so unfortunate, if it can be avoided, with one dollar more than is absolutely necessary to carry on properly and vigorously and successfully the operations of this new State. I might go on with other branches of industry but I merely advert to this, not, of course, as a rule that could be applied rigidly but in order that the officers that we are about to create here shall bear some proportion at least—be modified to some extent by circumstances in which we are bringing this new State into existence. Let us be a little consistent. In order that the people should be saved from the expense attending and making of laws to govern this new State, I voted against fixing the pay of the members of the legislature at $3 a day but the majority saw fit to fix it at that amount. I was willing it should be left to the legislature to regulate the matter to some extent but it was fixed at three dollars a day. After your representatives are elected and

your senators are, they come up to the capital to make your laws and you give them $135 a year. The men who occupy a position not less responsible nor less important than anything in the State. And now you propose to give $4 a day to men for the whole year who are not probably occupied half of their time. Take the most liberal view of the case and suppose he occupies three-fourths of his time I want to know if $2000 is not a nice little sum under such circumstances as I have stated. Fifteen hundred dollars a year is about $5 a day for every working day in the year; $2000 is between six and seven dollars every working day in the year. I think that ought to satisfy a man in these times.

MR. DERING. Will not the judge work in vacation?

MR. STEVENSON of Wood. I am supposing he will work every working day in the year. Say he works 300 days in a year, he has $6 or $7 for every day's work he does. I contend there ought to be something like consistency in the action of this Convention —something like economy in the offices it is likely to establish. If you look at the history of legislation going on in this country, from Congress down to every township in the different states, you will discover that the people are acting on the principle that their representatives must inaugurate economy and retrenchment. The governor of Ohio has lately told the legislature which assembled in that state, though it was a matter of sufficient importance to urge upon them the reduction of the salaries of nearly all the offices in the state including, I believe, his own; and the same recommendation has been made in other states and they are acting on it. Because it is a matter of necessity. It is impossible for the people as long as this rebellion is in their midst to be in a condition to pay such as they would be or have been when their industries were uninterrupted, and they will be in this condition for many years to come. Wherever you can economize, and I think this is one of the places you can it is the duty of legal gentlemen even; if this position is one of honor and profit, it is a duty they owe to the people, at least during these difficulties to give the benefit of their learning and of their experience for the welfare of this new State. If the time does come—ten or fifteen years or less from this time, when this red hand of civil war has passed away and our industries are again on their feet and the sources of revenue are restored, the people will be able and willing to pay high salaries to the gentlemen who occupy these different positions in the state government. If we are to incorporate here a fixed salary let it be as

low a one as possible so matters may be carried on successfully. I think $2000 is ample, and therefore I shall vote for the amendment offered by the gentleman from Marion.

MR. BROWN of Kanawha. Gentlemen have taken a very wide range in this discussion. The gentleman from Wood (Mr. Stevenson) thought we ought in our conduct exhibit some consistency; and he disclosed to us a rule for the application of the principle governing salaries which while he said it could not be carried to its utmost extent yet should have weight in determining the application of it here; and he instanced various callings and trades and industrial pursuit and the remuneration obtained by those who pursued them; and he exhibited to us that great conservative and most extensive, and wound up by saying they scarce made a dollar a day, and in connection with that was the remark that we should preserve our consistency in applying this rule. Well, now if anything is to be drawn from that I must arraign the gentleman on the score of consistency himself. Can it be we are to judge of what salaries should be paid judges of the supreme court by the profits that may be made by the agricultural community? The most conservative and honorable upon whom rest in every last resort the liberties of the country—the government of the country. I do not imagine that that can be the rule, a guide for us in this case. I will call to the mind of this Convention the course of the gentleman in the application of this rule. Now surely this honorable class ought to be treated as respectfully as any other class, and I make no distinction between the citizens of the State. I believe we have an officer here, the janitor, a worthy and excellent man who has his labors to perform about the house, and I believe the gentleman from Wood moved that $2 a day as a meager compensation for the slight services he performs, and the Convention adopted it without hesitation. Well, now, sir, he does not perform any greater labors than hundreds of men who are toiling at the spade, and shovel, the plow, the loom, the anvil and at the other vocations of life to make perhaps half the price according to the gentleman from Wood. Now, this rule does not work both ways, if the gentleman is to be the judge of its application; but I imagine this rule will not do to apply in these cases at all, that we have a specific duty to perform, and that is to ascertain what is an adequate compensation for the officer you propose to employ—not what other men make in totally different kinds of employment. If anything is to be considered in relation to what other men are earn-

ing, it is what those men are making from whose ranks you are going to take this officer. If I were to employ a blacksmith to shoe my horses by the day and he should charge me a dollar apiece, I should not object; and yet perhaps a hard-working man plowing in the field perhaps could not make more than his dollar a day, while the blacksmith could shoe eight or ten horses in a day. The question is not what the farmer gets but what is customary among these smiths—what do the blacksmiths usually charge? Prices are regulated among those pursuing the vocation in which he is engaged. When I ascertain that they all do the same thing, all receive the same price, I pay him the same. The rule of the world, established by usage, in commerce, in trade fixed everywhere by the inflexible law of supply and demand, is that special knowledge and skill commands special prices. This is true in the trades, in the professions—everywhere; and this is the only rule by which we can be governed here. The farmer or the blacksmith, each the best and most deserving in his line of employment, could not render you the service you need on the judicial bench; could not tell you what the law is in any specific intricate case, nor give general interpretations of the laws of the land by which the people of the country are to be governed. That requires special knowledge and faculty, possessed by few; and if we are to secure it we must pay the price.

The gentleman from Taylor compares this salary for a judge with the per diem of the legislature. I said three dollars a day was no compensation for the duties of the legislature. I understand it as only a gratuity to the member to cover his expenses while he works for nothing. The question is how long is he to work for nothing. I do not understand he undertakes to work for nothing for the rest of his lifetime; but that any gentleman in the community whose pecuniary circumstances permit it may spend some sixty days laboring for the community if it involves only the loss of his time, and does not destroy his business at home. He loses nothing; there is no inconvenience to him; it is no compensation for his services. It is different if a man leaves his business and takes up another calling. If a man leaves the bar and takes this office for a term, he must abandon his practice; he must give it all up; he must turn his clients adrift. Not only so, he precludes himself by the very provisions of your Constitution from receiving salaries from any other source or any other office. He must devote his life and labors to the calling of his office. Now, to justify him in doing this he should have a compensation for the service he is

about to undertake sufficient to give him a competent subsistence for his family. It may be that you could get judges if you put the salary at $5,000. You can have them at any price you choose to fix, for it was said by Lord Walpole that, "every man has his price." The question for a convention forming a constitution is, will the sum proposed secure the best men?

There is another principle that strikes my mind. I have seen people in the country who go about dealing, and who when they offered to buy any article always seemed disposed to get it a little lower than it was offered at; that everything must be squeezed down a little lower. Well, I never had that feeling; I despise it. I always like to see a thing have its fair, reasonable market value, and then pay it. If members of the bar receive double the salary you propose, or the full amount of it or less, these being the men from whom your judges are to be obtained, the probability of their accepting the place at a less compensation than they are earning is one of the considerations for the Convention. Another is, which grade you desire to have the services of. Lawyers who are earning no more than the salary you offer, or who are earning less, will be ready to accept; but are these the men you want? Is it better to save a few dollars in the salary and take the risk of an incompetent bench, or to invest a few dollars more and get the best the market affords?

Do our economical friends consider that while we are discussing this matter we are taking many dollars out of the public pocket; all this Convention under pay, wasting in this debate perhaps more than will be saved in a year on the salaries of the judges if they are even diminished as proposed. Gentlemen to be consistent ought to see that in the fixing of important public policies and public measures, we cannot be controlled by such penny-wise considerations as have been pressed upon us here. I imagine in providing for the expenses of your government, the salaries you attach to the offices are the smallest consideration; that the great evils to the country are not what is paid for honest services, but the corruption that is everywhere stalking through the land. It is not the fixed salaries given to officers to discharge the best ends of government but the extravagant drains on the public treasury in illegitimate and illegal ways. Take the expenses of the state government as prescribed by the constitution and you will find them a mere drop in the bucket of the expenditure that goes out of the treasury every year. It is these underground currents that are continually draining the treasury. While I am opposed to giving extravagant prices

for any service, I recognize that if we want a good article we must pay the market price; I am in favor of giving a fair and reasonable compensation to secure the talent and learning fitted for the office proposed. When you have done that, I am not afraid to face the music throughout the length and breadth of this commonwealth, where the people have commonsense and intelligence. I stand here to represent them as determined on the subject of economy as any other of the people, but who will never seek to have a thing for less than its value or put the price below what will secure to the best talent a fair compensation for the services required; and I am prepared to go home and defend my case before my people at any time and under all circumstances.

Now, I know something of the expense of living. One gentleman tells us he can live with his family and discharge the duties of judge for $500 a year. I do not know where this could have been. Living in Virginia since I was "knee-high to a duck," practising law some years, I have lived exclusively on my profession, and I know my expenses have been more than that—far more. I have no doubt we live about as cheap in our country as we know how. Well, sir, I know that Judge Summers resigned his seat on the bench in our circuit, and that his income from his practice was largely over the salary; that in taking the position he actually condescended for he was able to make the pecuniary sacrifice and take the office that paid him much less than his practice. But he did not continue to hold it to the end of his term. Well, sir, I am not one for even reducing these offices below that which men in the ordinary pursuits of life can live on with respectability. I imagine that a judge, like other men, expects to move in the circles of society that all respectable men are expected to move in, and have an intelligent class of culture around him. If you reduce the salaries below what they can live on in their community you have got to deteriorate the whole class. You cannot degrade your occupation and win the respect and admiration of the people for those who hold your offices; you only bring them into contempt.

MR. HAYMOND. I have been making a few calculations. Give a judge $2,000, it will give him $24,000 in 12 years. Three times that will be $72,000. If you give him $2500 and expenses, it will make about $3000 a year. That would make the whole sum $72,000, from which we can save $18,000. The gentleman from Kanawha has told us the liberties of the country are in the hands of the judges; that we should have good judges and pay them well,

and that the liberty and union of the country are in their hands. All I have to say, if the liberties of this country are in the hands of a few judges, God save us (Laughter). I tell the gentleman from Kanawha the liberties of this country are in the hands of another kind, the people; and the people of this country will rule it, sir. It is the old standby until the last hour when the flag is cut out. Sir, the people will let him know better than that (Laughter).

MR. SMITH. I do not intend to make any extended remarks. I yesterday, stated the opinion that there was nothing in a government more important than an intelligent judiciary—an independent judiciary. However, in that I have been over-ruled.

MR. STUART of Doddridge. I do not desire—

MR. SMITH. I must decline—

THE PRESIDENT. The hour fixed for recess having arrived, the Chair will be vacated.

* * * * *

AFTERNOON SESSION.

The Convention re-assembled at the appointed hour.

THE PRESIDENT. When the Convention took a recess it had under consideration the motion to strike out "five hundred."

MR. HARRISON. As the chairman of the committee is absent and this section has a great deal of interest in it, I hope the section will be passed by and we will go on to the 11th section. It is not probable much discussion will arise on the 11th section. I therefore move to pass by the section now before the Convention for a few minutes until the chairman comes in.

MR. DERING. I hope we will not pass on to another but finish this before we go on. We will get things mixed up. I trust we will take a vote on the motion to strike out. I think we are prepared to vote on striking out, unless there is some person that wishes to speak.

THE PRESIDENT. The gentleman from Logan had the floor when the Convention took a recess.

MR. VAN WINKLE. He will not be here.

MR. DERING. He is up at the court-house making a speech.

MR. SINSEL. The judge remarked when he left that he could not be here this afternoon.

MR. HERVEY. If there is to be any discussion, I desire to pass by this section for the present. I make that motion.

MR. POWELL. I do trust we will not do this. We have been passing by frequently for the accommodation of gentlemen and thereby delaying the business of the Convention. I think it is highly important we push right on. I am not opposed to a discussion of every question that comes up here but I am opposed to this thing of passing on and delaying and losing time. I hope we will put down this motion.

MR. HALL of Marion. But whilst that is a fact, and in view of another fact in connection with any action we take in this question, that we have made a precedent of passing by under like circumstances, would it be acting in good faith towards those who are absent to continue our course of proceeding in their absence? We ought to let it fall equally. The very fact that upon this question depends whether anything else is to be introduced makes it proper we should determine the question whether we will or will not strike out. If it shall be determined in the negative, it is what the party who is entitled to the floor wishes to impress on the Convention. If the Convention say so, it will very much expedite by avoiding what must necessarily follow if it be stricken out, for various proposals will then arise as to what will be inserted. Time will be saved and it will be more just and in accordance with our proceedings in other cases to pass by this section until the party can be here. It is only a courtesy that is extended to others; and if it be decided that we will not strike out it will save time. I trust it may be the pleasure of the Convention under the circumstances to pass by.

MR. SINSEL. I would just suggest the propriety of letting persons who are absent cast their vote. Let us take the vote now as they come in, if they choose to vote on it let them do so.

MR. HALL of Marion. If this should be done how will the business of the Convention be advanced? Suppose we vote to strike out, and the vote should be so close that the absentees coming in

and recording their votes afterward should change the result? Meanwhile we have gone on with other measures based on the presumption that the $500 was stricken out. Might we not get into a tangle that would be difficult to straighten out? I think we should extend this courtesy to the absentees, to pass by till they come in. I would not ask this if they were negligently absent; but we all know the absence is unavoidable.

MR. VAN WINKLE. It is but justice to the chairman of the committee to say that his resignation as member of the legislature takes effect to-day. He has more matters of importance to see to than if he had been intending to continue a member of that body. It is important the chairman should be here when the report from his own committee is under consideration. As this is probably the last time he will need this courtesy, I trust it will be extended to him. It can be passed by and be called up again at the pleasure of the Convention.

The motion to pass by was agreed to by a vote of 18 to 16.

The Secretary reported section 11:

"No judge, during his term of service, shall hold any other office, appointment or public trust, and the acceptance thereof shall vacate his judicial office; nor shall he, during such term, be eligible to any political office."

MR. VAN WINKLE. I think, sir, that perhaps under these words "public trust" in the 94th line "under this or any other government" ought to come in. He would be just as eligible to be elected Senator or member of Congress without this as with it. We cannot control that; and whether these words would be properly considered to mean an office under the United States, I do not know; but I think for safety they had better be introduced.

MR. HERVEY. I would call the attention of the gentleman from Wood to the 96th line.

MR. VAN WINKLE. We have no kind of right over the United States offices. The Senate of the United States is the only judge whether a man is eligible there; and the House of Representatives is its own judge of the same matter. My reason for offering the amendment is that standing in the connection it does, it is simply to exclude a conclusion. It might be inferred that it was an office of public trust under this State exclusively.

MR. BROWN of Kanawha. (who had just come in) What is the proposition before the house?

THE PRESIDENT. The Secretary will report the amendment offered.

The Secretary reported Mr. Van Winkle's motion to insert after the word "trust" in line 94, the words "under this or any other government."

MR. VAN WINKLE. I would explain in the first place, we have temporarily passed by the preceding section on account of the absence of the chairman. The next section was taken up and I moved to insert these words to exclude a conclusion because the last part of the section—"nor shall he, during such term, be eligible to any political office" would not prevent him being elected to either the Senate or House of Representatives.

MR. BROWN. I do not see any particular objection to the amendment. I confess I do not think it is necessary. This is a similar provision to that in our Constitution as it stands. I do not think it has ever been misunderstood. It would govern every public trust, crown, king or country.

MR. VAN WINKLE. It leaves the thing in doubt.

MR. BROWN of Kanawha. It strikes me a public trust within the United States is in it as—

MR. VAN WINKLE. The last part of the section must necessarily be confined because we cannot control election to the other places mentioned and therefore it might be inferred from the language of the latter part that the first also referred exclusively to this government. I think it would render it more certain.

Mr. Van Winkle's amendment was agreed to.

MR. VAN WINKLE. I move now the 10th section be taken up.

MR. BROWN of Kanawha. This has not been adopted. I suppose we had better finish the 11th. The last sentence in that section "nor shall he during such term be eligible to any political office." The gentleman from Ohio yesterday made some inquiry which struck me on looking into this sentence which seemed to involve obscurity, which reference to the sense rather inclines me to think it does. Whether "nor shall he during his term be eligible:" whether that means the time he is in office or the time for which

he may have been elected. To relieve the sentence of all ambiguity I propose to insert in place of "such term" the words "his continuance in office."

The amendment was agreed to, and section 11 as amended was adopted.

Consideration of the 10th section was resumed.

THE PRESIDENT. When the further consideration of this section was postponed, the Convention had under consideration a motion to strike out "five hundred" after "two thousand."

MR. SINSEL. I understood the motion to be to strike out "twenty-five hundred" and then alter the clause of the sentence "He shall receive a reasonable allowance for traveling expenses," and insert "twenty-two hundred" and there was an amendment offered to insert "two thousand." Then there was a division of the question called for, whether they would strike out at all or not.

THE PRESIDENT. The Chair held that the division of the question applied only to striking out "five hundred."

MR. VAN WINKLE. I hope the gentleman will leave that about the traveling expenses alone. It is not in the motion as I understand it.

Mr. Simmons called for the yeas and nays on the motion to strike out "five hundred."

MR. SINSEL. One word, Mr. President, I still insist the motion was to strike out the whole and then fill the blank, and one proposition was to fill it with $2200 and another with $2000.

MR. VAN WINKLE. The question was divided.

MR. SINSEL. Well, yes, to strike out first and then see what to insert. I don't want to be cheated out of my proposition in that way. This might compel me to vote for $2000 when I am in favor of $2500. If you only strike out the five hundred it would only leave it $2000.

THE PRESIDENT. The motion is only to strike out.

MR. VAN WINKLE. The gentleman wants to include with this the traveling expense question. To set his mind at ease, I will call for a further division of the question so as to take the vote on five.

The vote was taken by yeas and nays on striking out "five hundred" and resulted:

YEAS—Messrs. Brown of Preston, Brooks, Brumfield, Caldwell, Carskadon, Cook, Dille, Hansley, Haymond, Hubbs, Hoback, Hagar, Montague, Mahon, O'Brien, Parsons, Powell, Pomeroy, Sinsel, Simmons, Stevenson of Wood, Sheets, Soper, Taylor, Trainer, Walker, Wilson—27.

NAYS—Messrs. John Hall (President), Brown of Kanawha, Battelle, Dering, Hall of Marion, Harrison, Hervey, Irvine, Lamb, McCutchen, Paxton, Robinson, Ruffner, Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Van Winkle, Warder—18.

So the motion to strike out was agreed to.

MR. SINSEL. I presume it will be in order to take the vote, and I move to insert "$2200".

MR. BATTELLE. It seems to me we ought in the first place to vote, if we are going to, on the last clause. I judge from what was said that there is to be a vote on this last clause. I confess I am not able to vote on the other until I know what our decision is to be on that. If we are to allow judges no traveling expenses, we, of course, should allow them more salary. If we allow them the expenses necessary for travel, we might reduce the salary. I felt this same necessity in the vote just given; and it does occur to me that the proper way to get at this thing is to first settle the question and then determine the salary they are to receive absolutely.

THE PRESIDENT. The Chair is of opinion that the better way would be to dispose of the motion.

MR. DERING. I move to amend the motion, if it is in order by way of testing the sense of the Convention on this point. I think we had better have a test vote on that question. I move therefore to strike out the words "and each shall receive a reasonable allowance for necessary travel."

THE PRESIDENT. That is the question.

MR. VAN WINKLE. Yes, sir, but I understand from the Clerk that no such motion has been made. The pending motion is now on filling the blank with "twenty-two hundred."

MR. POMEROY. There was an amendment offered by the gentleman from Marion to fill it with two thousand.

MR. STUART of Doddridge. He has got his amendment; it is two thousand now.

THE PRESIDENT. The question will be on the amendment to the amendment.

MR. DILLE. I supposed the motion was to strike out "and five hundred". The motion was not as I understood to strike out "two thousand five hundred" but "and five hundred." How was that?

MR. STUART of Doddridge. That was the motion. It leaves the salary "two thousand."

THE PRESIDENT. The gentleman from Preston will observe that there is a question of an amendment to an amendment depending here. It raises the question between $2000 and $2200. To dispose of that question would be in order. My own impression is that it would exclude other matter getting in until it was disposed of.

MR. POMEROY. Would not this relieve it, if both gentlemen would agree not to fill the blank until we settle the matter about traveling expenses. I do not understand that when we struck out "five hundred" we did so in order that we might fill the blank with something less than that. Our votes will be much governed by this matter of traveling expenses, and I am free to say I want to fix the salary and leave the men to pay their own expenses.

MR. SINSEL. I may have failed to express myself at the time but I aimed to make this kind of a motion, that we would strike out all that had reference to the salary of the judges of the Supreme Court of Appeals and insert $2200 in its stead. The gentleman from Marion offered an amendment to that motion, to insert $2000. Well, upon my motion there was a division of the question, that on striking out and then a further division; but as there has been a misunderstanding about it, I am willing if the gentleman from Marion will do the same to withhold mine for the present until we settle mileage.

MR. HAYMOND. I cannot consent to it. I think we had best fix the salary first. Then if there is any extras to give let us give it.

MR. STEVENSON from Wood. I hope my friend from Marion will reconsider his declaration just now. I think it would be much better; we could vote more intelligently to keep all these matters in reference to salary out of the question until we decide what we will do with the traveling expenses, whether it shall be included in the salary.

MR. DERING. In order that we may test the sense of the Convention in this matter I move that the rules be suspended in order, as the gentleman from Marion does not choose to waive his amendment, that we may first reach this question in reference to traveling expenses.

MR. HALL of Marion. I would rise to a point of order. How, when by striking out it leaves $2000, can an amendment be entertained proposing to make it $2000. It occurs to me that a proposed amendment cannot be entertained that is precisely as it now stands.

THE PRESIDENT. We are working on an amendment to an amendment.

MR. HALL of Marion. That amendment is that the amount shall be $2000 when it is already $2000.

THE PRESIDENT. Not until the original amendment will be adopted.

MR. HALL of Marion. I am not making myself understood. I would really like that I could understand somebody who would explain to me what the amendment to the amendment must be. You have amended the section now by striking out "and five hundred" as the salary of the judge of the supreme court, which leaves the provision that the salary shall be not less than $2000.

MR. SINSEL. They took the vote wrong. I insisted at the time when striking out the $500 that my motion was to strike out the whole. If they had done this we would have had none of this difficulty. I contended at the time.

MR. HALL of Marion. It is immaterial whether the vote was taken right or wrong.

THE PRESIDENT. What does the gentleman say? To withdraw his motion.

MR. DERING. I cannot withdraw it (Laughter).

THE PRESIDENT. The Chair will put the motion of the gentleman from Monongalia.

MR. LAMB. I beg leave to say to the Chair that the amendment of the gentleman from Marion is certainly out of order. The five hundred has been stricken out and it stands now $2000 with a blank after it. Then a motion is made to insert two hundred in the blank, and then the motion of the gentleman from Marion is simply to leave it as it is now—a motion which the Chair has no right to entertain. Is such an amendment in order?

THE PRESIDENT. The Chair sees no propriety in putting it, and in that view of the case will consider the motion made by the gentleman from Monongalia. The question is on the adoption of the motion of the gentleman from Monongalia to suspend the rules.

MR. PAXTON. It appears to me we have got into a good deal of a snarl. I would infer that probably a majority of the Convention would be satisfied if the salary was established at $2500, this "additional allowance for necessary travel stricken out." Now, in order to get at that question, I suggest the amendment be withdrawn for the purpose of reinstating the sum originally here and then take a vote on the motion to strike out the clause in reference to travel, so as to get a direct vote on a salary of $2500 without any allowance for travel. I think from the expressions I have heard that would probably meet the views of a majority of the Convention. If such is the case, if the gentleman would withdraw the amendment now before the house I would then make that motion to test the sense of the Convention on a simple proposition of a salary of $2500 without any allowance for travel.

THE PRESIDENT. Will the gentleman from Monongalia withdraw?

MR. DERING. I will do anything to bring about a conclusion in regard to this salary.

MR. HERVEY. I do not want to make the house any difficulty; but I am clear the object of the gentleman from Ohio cannot be reached by the vote he supposes. There must be a vote of reconsideration. We have acted on $2500; we have stricken out the $500. Now, that proposition cannot be reached in the manner proposed by the gentleman from Ohio.

THE PRESIDENT. The Chair inferred that the object of the gentleman from Ohio was to first rid the report of the question of the allowance for travel, to vote on the other, and then it would be in order.

MR. PAXTON. My idea was simply that all pending amendments should first be withdrawn by general consent; that having been done I presumed some one of those who voted for striking out the $500 would move a reconsideration of that vote; that then we should reinstate the sum of $2500 and then take a vote on the paragraph here giving a reasonable allowance for travel, believing it would accommodate a large majority of the Convention.

THE PRESIDENT. Would it not be the shorter way to first move to strike out the traveling expenses?

MR. PAXTON. I am willing for anything that will bring about a settlement of this.

MR. STEVENSON of Wood. I will make a motion of that kind if it is in order—to strike out the words "and shall receive a reasonable allowance for necessary travel."

MR. BROWN of Preston. On that motion I call for the yeas and nays.

MR. BATTELLE. Before the call is responded to, allow me to say the question is in just the shape I desired to have it in order that the Convention might settle as a principle by itself whether these officers shall have an allowance for necessary travel without any reference to what they receive. We will afterwards then fix the salary at whatever sum the Convention think proper—that principle having first been settled whether there shall or shall not be such an allowance. I wish to vote on that separately and before the other sum is fixed, and for one I am in favor of that principle. I believe they should receive expenses for necessary travel; and having settled that I am prepared to consider the amendment offered by gentlemen here.

MR. STUART of Doddridge. I must say that I am opposed to striking out. I suppose if we fix salaries here, we desire them to be equal and uniform, that justice may be done between the judges. In the district composed of Ohio, Brooke and Hancock the judge will have little travel to do. Go out into one of our mountain districts judges will have to travel hundreds of miles

and perform an equal amount of labor—do ten times the amount of travel. It is not a pleasant job to ride over the hills of West Virginia across through the mountains, through the weather and storms. The compensation would not be uniform if all were fixed at one figure. I have no idea it is going to affect the salaries of these judges anyhow. I believe a majority of this body have settled down on perhaps the amendment of the gentleman from Marion. I am inclined to favor that at least. If that is stricken out and the salary is fixed at $2000, I say it would be very unequal —very unfair—because one judge would have to perform perhaps a great deal more labor than another, in traveling—that additional labor. He ought, it seems to me, have some allowance for it. I do not see any other way to reach it if it is not in the way proposed in this provision now sought to be stricken out.

MR. SINSEL. The last Richmond convention increased the salary of judge from $1500 to $2000 and reasonable allowance for traveling expenses. The people universally thought the convention did wrong then; that the judges had not been complaining of their compensation more than after that; that we had good judges at a salary of $1500 and traveling expenses and they thought the legislature should fix the traveling expenses very low. What was the result? Instead of giving them such mileage as you would pay for travel to and from court, if my memory serves me correctly, it was there 20 or 25 cents a mile in addition to the salary. This is the thing I wish to guard against. Whatever we pay the judge, let us pay him enough and have the sum settled so there shall be no cavil or dispute about it. A man may in traveling under this provision go to drinking saloons, spend money that way. He may have a receipt. Here's my bill at a certain place and this my traveling expenses. It will be allowed. If a man chooses to indulge in such luxuries he may do it at his own expense.

MR. BROWN of Kanawha. I think there is some misapprehension as to what this means. I have never known a case where a judge drew more than his mileage; and I confess it seems to me it would be most manifest injustice supposing this state capital should be here in Wheeling if one of the judges should live in Wheeling, another in Charleston and the other say in McDowell and they were all paid exactly the same compensation. It would seem to me great inequality to require a man to come from McDowell here some three or four times a year and return to his family to discharge the duties of his office and pay them all the same prices. All per-

form the identical same labor while here; but one would spend some two weeks in coming here and going back. The ordinary mileage is allowed a legislator from McDowell. That is on the principle of equality. Each will receive his per diem and his mileage for the distance traveled. That makes it exactly equal. Each will be remunerated according to his expenses. He is really giving his labor for nothing during the whole term and necessary traveling expenses coming and going. I cannot conceive upon what principle of justice and equality any distinction can be made between the judges unless it is the intention to monopolize everything about the capitol and exclude all those in the distant parts of the State from participation in the offices of the State; on what principle you give to the members of your legislature this mileage to equalize their traveling labors and refuse it to other of the officers in another department who are required to repair to the capitol in the performance of their duty. I should suppose the object of the Convention would be to carry out the principle of equality, to all officers of the State; that the man who resides in the extreme border county of the State shall stand on a perfect equality with the man who resides at the capitol, if he be chosen to any office in the State. I stand here to defend not only the provision as it stands in the report but the principle and the rights of those who are in the borders as well as those who shall be about the center. Unless therefore it is the determination of the Convention to discriminate between the legislative and judical officers, against the judical officers and in favor of the others, I am at a loss to see how it is possible to maintain the motion to strike out this provision. The idea that officers, either legislative or judical, are to be allowed to go about and increase their expenses as they see fit and ask the public to pay the bill is preposterous. That each will be allowed only the traveling expense which is covered by the shortest practicable route should be the rule with regard to legislators. The same rule will be applied to the judges as to the legislature. And whatever the law has fixed as the rule to determine the traveling expenses of the one must govern the other. Therefore the objection of the gentleman from Taylor is entirely a chimera in his own mind —that the gentlemen are to go to hotels and scatter the public treasure and ask the public to foot the bill. That will not be so; and I presume the judges to be elected would expect to be men of character.

MR. HERVEY. I am in favor of retrenchment and reform, but I am not in favor of taking away the support of our public men. What is the provision in the present constitution? Judges receive less than $3000 per annum and traveling expenses. Let us suppose the traveling expenses would be $500. Our judges are now receiving on an average say the sum of $3500. This Convention has expressed the determination not to retain the $2500 but propose $2000. Now, it is seriously proposed to strike out this provision for traveling expenses. That is retrenching to a fearful extent. Suppose you reduce the $2500 to $2000 and estimating the traveling expenses at $500 you allow them; it makes just $2500, which is a reduction of precisely 35 per cent on the present salary. I am of the opinion that in the course of the next 12 or 15 months money will be more wanted than anything else (Laughter). There may be such an expansion in the currency of the country—must of necessity be the case—such a vast increase of United States money—as must result in a serious depreciation in value. There will be consequently an inflation of prices. Property will go up; money will go down.

MR. HAGAR. I have changed my mind a bit. I believe in us having good judges if we can get them. In a few thoughts advanced the other day I said it was right to pay them a reasonable compensation for their labors. I think so yet. I incline to think it is right they should have mileage as well as other men who travel a distance to serve the public. It would be unreasonable, I think, to fix a sum without this allowance for mileage. I think with the gentleman from Doddridge that the Convention will not go above $2000. I do not know if we give them mileage but they will get under it if we do not watch out. I am in favor they be allowed regular mileage.

MR. SOPER. Strike out "reasonable allowance" and insert ten cents a mile.

THE PRESIDENT. That would be a substitute for the amendment.

MR. STEVENSON of Wood. My only object in making this motion was in order that the Convention might settle this matter. I had no particular feeling; in fact I had hardly formed an opinion about it; but I saw there would be a difficulty in the Convention settling with any kind of certainty on a salary until this matter was settled. I am very well satisfied it would operate unequally

not to have the principle of allowing a reasonable mileage incorporated here. But I do object to the phraseology here; and the amendment made by the gentleman from Tyler meets the only difficulty in my mind. It certainly leaves the door open to abuse if we say a reasonable amount of traveling expenses and leave that to the legislature. They will take very different views probably about what the reasonable traveling expenses of a judge are, if you fix it as we have in this phraseology; but if you say so much per mile for travel I shall most unquestionably favor retaining the clause if it is so modified or amended. If not, I shall vote in favor of striking it out in order to get something else. But that will be a spur to the people and do justice to the judges.

MR. BROWN of Kanawha. I would suggest an amendment which I think the gentleman will accept; that is, instead of ten cents a mile "the same allowance for necessary travel as is allowed to members of the legislature."

MR. SOPER. That will do.

MR. HAYMOND. If we put in $2000, $2200 or $2500, I would like to know what that is for. I understand we are paying a man to do his duty and not paying him for travel. He may go in a balloon, or any way he pleases (Laughter). I don't see the use of paying a man twice for hoeing a row of corn.

The motions to strike out and to insert the language suggested by Mr. Brown were successively agreed to.

MR. POWELL. Would it be in order to make a motion to strike out $2000?

MR. HALL of Marion. I see no difficulty now if we take the question on the motion of my colleague. The salary of the judges of the supreme court shall not be less than $2000, will be the decision if we sustain it.

MR. SINSEL. I move to fill the blank with "two hundred," to make it "two thousand two hundred."

MR. VAN WINKLE. I move to amend, sir, by inserting "four hundred," to make it "two thousand four hundred."

MR. BATTELLE. I wish to inquire what will be the effect of these motions if the Convention refuses to insert either four hundred or two hundred. Will the salary then remain at two thousand?

THE PRESIDENT. In the opinion of the Chair, there is where the Convention has reduced it to—has placed it.

MR. BATTELLE. If these amendments then both fail, the salary will remain at $2000?

MR. HAGAR. If some one doesn't move to lower and carry it.

The vote was taken on Mr. Van Winkle's motion to insert "four hundred" and it was rejected by the following vote:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Carskadon, Hall of Marion, Irvine, Lamb, McCutchen, Paxton, Robinson, Ruffner, Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Van Winkle, Warder—15.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Battelle, Chapman, Caldwell, Cook, Dering, Dille, Dolly, Hansley, Haymond, Harrison, Hubbs, Hervey, Hoback, Hagar, Montague, Mahon, O'Brien, Parsons, Powell, Pomeroy, Sinsel, Simmons, Stevenson of Wood, Sheets, Soper, Taylor, Trainer, Walker, Wilson—32.

MR. CALDWELL. I am inclined to think the "twenty-two" is not quite enough. I move therefore to fill with "three hundred."

Mr. Hansley called for the yeas and nays. The vote on Mr. Caldwell's motion was taken and resulted:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Caldwell, Carskadon, Dering, Hall of Marion, Hervey, Irvine, Lamb, McCutchen, Paxton, Robinson, Ruffner, Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Van Winkle, Warder—18.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Battelle, Chapman, Cook, Dille, Dolly, Hansley, Haymond, Hubbs, Hoback, Hagar, Montague, Mahon, O'Brien, Parsons, Powell, Pomeroy, Sinsel, Simmons, Stevenson of Wood, Sheets, Soper, Taylor, Trainer, Walker, Wilson—29.

The question recurring on the motion of Mr. Sinsel to insert "two hundred."

MR. SINSEL. I just want to make one remark. I would insist on members of the Convention who are not making any more than I do myself that this is not too much. I think the people will be satisfied with it. We will want to make a little distinction between them and the circuit judges.

MR. STEVENSON of Wood. We have been very liberal on this side of the house. We have given now mileage in addition to the $2000, the only amount we intended to give you; and we are not so well satisfied the people will be satisfied with even that, but we are willing to give the gentleman from Marion the $2000 and nothing else.

MR. BROWN of Kanawha. I regret that we seem to be making a Constitution with reference more to the popular ideas than to our judgment of what is best. It seems to be we are the better judges of questions entering into the construction of this Constitution that the average man in the shop or the field who has perhaps never given an hour's study to the problems involved. If we are not, we ought not to be here. The rule that should govern our action ought to be to do what we think best and right, in confidence that the people will approve when they understand what we do, feeling that in any case their approval is much less important to us than the approval of our own conscience and judgment.

The vote on Mr. Sinsel's motion to insert "two hundred" was taken and the motion lost by the following vote:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Battelle, Chapman, Caldwell, Carskadon, Dering, Dille, Hall of Marion, Hervey, Irvine, Lamb, McCutchen, Paxton, Robinson, Ruffner, Sinsel, Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Van Winkle, Warder—21.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Cook, Dille, Dolly, Haymond, Harrison, Hubbs, Hoback, Hagar, Montague, Mahon, O'Brien, Parsons, Powell, Pomeroy, Simmons, Stevenson of Wood, Sheets, Soper, Taylor, Trainer, Walker, Wilson—26.

MR. RUFFNER. I do not know what we are going to do with the blank; and as we have tried various other sums, I will move twenty-one hundred.

MR. SINSEL. The yeas and nays on that, sir.

The vote was taken on the motion and it was lost, the vote being:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Battelle, Chapman, Caldwell, Carskadon, Dering, Hall of Marion, Hervey, Irvine, Lamb, McCutchen, Robinson, Ruffner, Sinsel,

Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Van Winkle—19.

NAYS—Messrs. Brown of Preston, Brooks, Brumfield, Cook, Dille, Dolly, Hansley, Haymond, Harrison, Hubbs, Hoback, Hagar, Montague, Mahon, O'Brien, Parsons, Powell, Pomeroy, Simmons, Stevenson of Wood, Sheets, Soper, Taylor, Trainer, Walker, Warder, Wilson—27.

MR. HAYMOND. If it is not already filled with $2000, I move to fill it with $2000.

MR. SINSEL. That would be $4000.

MR. HAYMOND. I said if it was not already.

THE PRESIDENT. The Chair is of opinion that the blank is already filled with $2000.

MR. HAYMOND. Well, that is what we thought.

MR. PAXTON. That section as amended now would leave the legislature to increase the salary of the judge of the circuit court. The salary "shall not be less than $2000." It fixes the salary of the court of appeals at $2000, but says the salary of the circuit judges "shall not be less than $2000." I suppose the intention is to fix it at a definite sum also.

MR. STUART of Doddridge. I move, as I think there should be a discrimination in the pay of these two officers, to insert "not less than $1600" in the 80th line.

MR. BROWN of Kanawha. As the gentleman's amendment contemplates two distinct propositions: the one a prohibition of the legislature from changing the salary, the other the reduction of it, I desire the question should be taken first on changing it. I desire to say, then, while on the floor in regard to the subject of the amendment—

MR. STUART of Doddridge. I have no objection to dividing it.

The vote was taken on striking out the words "not less than," and the motion was agreed to.

MR. BROWN of Kanawha. The question as it stands now in the report just places all the salaries at the same price—$2000, and it is not to be left to the legislature in any way. The proposition of the gentleman from Doddridge is to diminish the salary of the

circuit judges $400 each, making it $1600. I think, sir, that there is not much use to discuss the question, but only to say this: The gentleman from Doddridge thought the reduction of the salaries of the court of appeals too low and has very consistently voted with me throughout against that reduction. The gentleman moves, as I understand him that there shall be kept up the same distinction between the two. Now, I am satisfied of one thing—very well satisfied—that the labors of the circuit judges are the more onerous; that the circuit judge performs more labor in a year, decides more cases in a year, more law propositions in a year and has to do it promptly on the circuit without aid of that deliberation and leisure that the court of appeals judge has; and so far as the question of labor is concerned, when this Convention have fixed the salary of the judge of the court of appeals at $2000 as the compensation for that service they have fixed, in my humble opinion, the lowest price that ought to be required for the salaries of the circuit judges, who will have to perform much more labor and discharge, in my humble opinion, much more responsible duties. The only question is of distinction; that there is some distinction attached to the position of judge of the supreme court, although he may have to perform less labor and do it under circumstances much less trying and difficult. Because he has nothing to do but decide a question with the paper before his eyes; to decide cases just sprung upon him, without the aid of libraries, in very many instances wherever he happens to be found on the circuit. Again, the circuit judge has to discharge another duty that is a very onerous one when connected with the balance of his duties, and that is the hearing of injunctions. He is met by the counsel seeking applications for rights of procedure to stop other tribunals from proceeding against them, with applications for injunctions at every turn, by motions to dissolve injunctions in vacations of which are extra duties outside of the regular duties he has to perform while sitting in court. I cannot therefore appreciate the argument of the gentleman from Doddridge which seeks to make a distinction by reducing the salary of an officer simply for the sake of creating a distinction between him and another. If the Convention had been content to keep the salary of the supreme judges at a higher price, I should have had no objection to the distinction; but to do it in order to create the distinction, it is a strange principle to limit those officers who perform the greater labor to the lesser salary, simply for the sake of the distinction. I hope therefore it will be the sense of the Convention to place all these judges on a similar footing, and

especially so as we have already adopted an amendment which authorizes the judges of the court of appeals to call up the circuit judges to take their places in the supreme court in case of accident or disability on the part of a supreme court judge. So that they are not only required to perform their own duties, which are more onerous than the court of appeals, but in addition to that they are obliged to respond to calls to the court of appeals and made to discharge the duties of any of the judges of that court without any extra compensation. This discrimination ought not therefore to be made against them.

MR. STUART of Doddridge. It is absolutely necessary, in my opinion, that there should be a distinction between these two officers in point of salary. That will be illustrated almost by the report of the gentleman himself. I would ask why the distinction was made in the report. The report gives $2500 to the court of appeals and $2000 to the circuit judges. Now, there was a reason for that and the reason is this: it is absolutely necessary that the distinction should be made because unless you do, you will not perhaps get any man into the court of appeals, or at least your best men. It will be much easier to be elected to the circuit judgeship than to the court of appeals. Your best men will not risk getting the nomination for an office that covers the whole state when it is so much easier to get a nomination from the circumscribed circuit. Unless you make this distinction, you have no assurance that you can get the best ability to offer itself for a place on the court of appeals. Another thing: there is a difference in the expense of these judges. For these judges out in the country, living is cheap, while the judges of the court of appeals will have to go to the state capital where it will cost them more than the difference of $400 in living. Then, sir, the best talent could offer themselves for this office. You will always find men offering themselves for the best places. If the circuit judgeships should pay the best, you will find our best lawyers offering for those places; and somebody will have to fill the other places and it will not be the best talents.

MR. VAN WINKLE. I call for a division of the question, on striking out first. That will bring the Convention to a direct vote whether they want the $2000 to remain or not.

MR. POMEROY. I suggest an amendment, to come after the vote to strike out, that the salary be $1800.

The motion to strike out was agreed to.

MR. POMEROY. Then I offer that amendment to the motion of the gentleman from Doddridge, that the salary be $1800. I agree with the remarks of the gentleman from Kanawha. From all the knowledge I have of these two courts, the circuit judges have far more labor to perform. We have made provision of that expense already. A circuit judge in many districts would embrace six counties; has to get in each one of them four times a year and hold twenty-four distinct terms of court. I think he ought not to be paid much less than the court of appeals. I think this would be about an adequate salary. I am not at all particular about the amount, but I favor $1800 as being better than $1600.

MR. BROWN of Kanawha. I would direct the attention of the Convention to one fact. The gentleman from Hancock will find himself mistaken in his concession he has made, that the travel of the judges of the supreme court will be the greatest. On the contrary, I think when you take the circuits in the majority of them the travel will be much greater to the circuit judge than the supreme court judge. In addition to that there should be borne in mind by the Convention a fact that I think they overlooked. The salary fixed by the present Constitution of Virginia is $2000 a year to the judge and he has only two courts a year in his circuit. That is required to be fixed now at $1800 and he is to have four courts a year—just double the amount of labor. You have also transferred all the causes that arose in the county courts to the circuit courts. You will have increased their dockets by just so much as the county courts depleted it. Take some of the circuits, and we will find a number of them have six counties. There are a number of circuits now in the State that have not more than six, or six or eight; and while you will have diminished the circuits to a few counties you have doubled the labor by making them hold four courts a year. I wish gentlemen to bear in mind that our courts ordinarily begin in the spring. Take Kanawha circuit, with which I am more familiar, it begins on the 20th of March; very bad weather to travel in; when the waters are ordinarily very high and roads bad. The court goes from Wayne county to Cabell, to Putnam, to Mason, to Jackson, to Roane to Kanawha—never stopping a day but going from court to court keeping up the succession without a single moment's loss of time, and gets into Kanawha after the 4th of July. It is a very common thing for us to be found in the circuit on the 4th of July. Then the court begins on the 20th of August in Wayne, and this same court continues until after Christmas. Now, you

have a little interval between the last of July and the 20th of August; and in that intermediate space are injunctions, writs of habeas corpus, motions to dissolve injunctions in the judge's chambers; all this continual pressure on the judge during all that time. Well, in the winter it is the same. Double these terms, and where will you be then? You see you are keeping up one continual round of court all the time and yet diminishing the salary: increasing the business, increasing the labor, doubling the number of courts, and at the same time diminishing the salary—and for the only purpose and reason so far as I can ascertain, in order to make a distinction between the judges of the two courts. It seems to me we ought not to act from such a motive. We ought to give to these officers a salary that will compensate them for their labors. That salary, when you have counted the labors and increased number of courts, ought not to have been diminished.

MR. STEVENSON of Wood. I hope the amendment of the gentleman from Hancock will not prevail. I shall not go now into any argument on the subject, but merely say that the same reasons which were urged against $2500 in the other case lie with equal force against this $1800, if the report of the committee, in the first place, is to be relied on as giving a fair proportion of the amount of the recompense that should be received in the two positions. The committee themselves who have considered this matter make a report of a difference of $500 between the judges of the supreme court and the circuit judges. I suppose they had good reasons for making that distinction, and I am convinced of that after hearing the remarks of the gentleman from Doddridge and that there is good reason for making some distinction in regard to the amount of salary.

Now, sir, $1500 is the amount I had in mind as about the amount I have thought would be sufficient for the largest of these circuits. The people after all—and I am not ashamed to say so far as I am concerned that I wish to represent the opinions of the people, would be satisfied with this amount, or probably $1600, as proposed by the gentleman from Doddridge. I am willing, sir, in order that this matter may be settled this evening without any further discussion, to vote for the amendment of the gentleman from Doddridge for $1600. But I do think that $1800 under the circumstances is too much.

MR. POMEROY. I do not think the argument of my friend will hold good that because the committee made the distinction between

the two courts, we should reduce the lower salary for a corresponding large amount. If we reduce the lower salary in the same proportion we might have no salary at all. So far as the labor and expense is concerned, the circuit judges earn as much as the others. We are accustomed to offer higher pay for the higher court to attract the greater knowledge and talent requisite for the peculiar service required. There is no need for the sake of a distinction to reduce the pay of these laborious positions below a fair compensation as this proposed reduction of $400 would do. We want to pay all our judges salaries sufficient for them to live without anxiety for the subsistence of their families. Every industrious man ought to be able to have a little saved at the end of the year. I am afraid some of my friends are possessed with the idea that everything must be reduced. I do not know but my friend from Wood will go home and take to reducing his own expenditures —take to making weak coffee and weak tea under the theory that everything must be reduced.

MR. HALL of Marion. I think a wrong conclusion seems to be drawn here by some members as the basis of their action. There seems to be an inclination on the part of some who have some knowledge of the ideas of their people that they are sent here to represent those ideas; and the gentleman from Wood county says he believes the sentiments and wishes of his people is to reduce, and that as a representative man he must represent that sentiment. Now, I beg to reflect a moment to see whether that is the correct foundation rule by which men who represent the interests of a people should be governed. I disclaim that I am expected—and I here declare that I will not—represent a mere idea—a mere whim, of my people, but I will represent what I believe to be their true interest. Their ideas, their impressions, their conclusions may have been formed without any investigation or even means of knowing what should be the rule of action. It is the duty not to represent a crudely formed idea but the real and best interests of our people; and the man who stands as the representative of the people who has not the courage to do what he knows is his duty although every man in his county might denounce him, does not act up to the highest standard, is unfit for a representative, in my humble opinion. I know it is a popular idea to have a "cheap" government—cheap everything. It was a very good illustration of the gentleman from Hancock when he suggested to the gentleman from Wood that he would probably go home and curtail his expenses by getting weak

tea and coffee. If he is consistent, he will do it. By the course he is pursuing, he wants everything weak. I guarantee if he has his way about these salaries, he will get a weak court if you are to beggar those who you ask to serve you in these laborious and responsible positions. I congratulated myself that we had knocked out that old fungus, the county court; but I am very much afraid it will be out of the frying-pan into the fire. It looks to me very much drifting in that direction. If you make your public offices cheap, you will get cheap men to fill them. Every man grown wise by experience knows that the lowest priced things are not the cheapest. The old darkey who gave the gentleman's boots an extra shine and charged a little extra for it, explained that so much was for the labor and the blacking; the rest was for the "know how." Let us bear in mind that the know how is what we want and what we ought to be willing to pay for. Can we expect to find men qualified for the judicial work, requiring much legal learning, experience, business capacity, tact, and by no means least undoubted integrity—for the pitiful compensation this Convention seems disposed to offer them—scarcely the interest on the money they have expended to qualify themselves for this work; for I tell you when a man has spent the time and money that is requisite to fit himself to do the work of the bench with advantage to the public and with credit to himself, he has made a very considerable investment. My observation is that men who are capable of filling positions and earning good wages will have them. Men in commercial business soon learn the lesson that they want capable and trustworthy men or none. They cannot afford to entrust important matters to cheap men. Can we, in framing this fundamental law for a state afford to be governed by this petty rage for cheapness at the expense of all other considerations? You want a circuit judge, to fill one of the most laborious and important positions in the State—one in which the whole community has a very intimate and vital interest. You offer him $1600 a year to compensate him for his time, his labor and his expenses in the continuous travel around the country which he has to perform. You ask him to relinquish a practice—which if he is a man fit for the post—if he has the knowledge and has had the experience that will fit him for the bench at all—a practice that will be worth at least one-half more, perhaps double; in the pursuit of which he can stay at home with his family, do much less labor and have the benefit of living as men like to live. Not the life of men on the circuit ten months in the year. I have lived at home all my life, except little trips to

this place or that; and I find there is a material difference between such a life and that of an official who is obliged to be away from home a great part of the year, living in the court-room by day, boxed up in a little corner room at a hotel at night, ten months in the year. We ask high-class men to do this and pay all their expenses away from home, for $1600 a year. I ask where there is a man at all fit for the work who for much less labor in that time does not earn more money. Where is the inducement? Oh, the honor of the position. Well, there is some honor in it provided you do not degrade it until it becomes a dishonor.

In regard to the difference made by the committee, between the salary of supreme court judges and circuit judges, I know it was the general feeling of the committee that the former was made higher more because of the old custom than because of any real necessity or propriety. We followed what had gone before; that the position required higher talent; that the compensation should command the very best talent and capacity in the State. Having reduced the number of the court from five to three, we were content to stop there. A consideration that we did not care to meet until the question came before the Convention was this: under the old rule, the court of appeals acted not only for all the counties but for the entire state as it was before and not as now. Only there would be at least three times the business that would go to them that will go up from the territory forming the new State. I do not know whether I was like other members of the committee or not, but we did not care to have that mentioned. So far as I know it was not mentioned. I speak of that why there should not exist a difference between the compensation received by the circuit judges and those of the other court—unless, forsooth, the difference should be against the judges of the supreme court. The amount of business will be so much less, going from so much smaller territory that while the difference with reference to the matter may have been proper before that difference would not now exist and the scale would be turned, for that reason, on the other side. Now these are considerations.

This idea of cheap justice which seems to have taken a hold on the Convention, and which was happily illustrated by the suggestion of the gentleman from Hancock, reminds me of the old man in church who became enthusiastic under the preacher's talk about the free religion of the gospel, who thanked God for such a free religion, so cheap that it had never cost him a quarter; and of the minister's response: "God bless your stingy soul, it is not worth

a quarter." But let me ask gentlemen if they are not responsible to the people and the country for the interests, and the result of the operations of what they propose now to submit to the people. If we act in this matter so that we have not an efficient judicial tribunal, how will the interests of the people be affected if not injuriously. Are we not responsible, no matter what may be the promptings or instructions of the people? If we are men, we will consider the true interests of the State, and if our people do not agree with us we will endeavor to satisfy them that we did represent their true interest. If they do not believe that, we will leave them to conclude anything they like. If there is anything at all that is important, it is that we have this tribunal at all events the very best that can be made. And talk about saving. You have saved a few dollars by cutting down the pay of your court of appeals. But suppose the effect should be to fill that bench with incompetent men, to destroy the efficiency of that tribunal—then have you saved anything? Have you not lost? We cannot shut our eyes to the fact that our lives, our reputations, our every interest, are dependent on the purity and efficiency of our courts. We have abolished one, reduced another to three members, and now if we fritter away the other until you can get nothing above a two-penny pedagogue on the bench, where are we? If I want to engage a man to attend to anything for me that is worth attending to, I will give three prices to have a man who will do it right rather than a man who will not do it right; and so will any man when it is a question between his pocket and a contingency. As a member of this body, sir, I do not care what the amount may be if it is necessary to have a matter done right. Every man has an interest more or less directly in our courts, because the good order of society, your rights, your every interest are dependent on the administration of justice; and as I before remarked your very lives and reputations are dependent on the purity and efficiency of that tribunal. I trust we will act in this matter with reference to the facts in our case; that when we acknowledge a necessity for a court we will then conclude we should have a good one. When we have come to that conclusion, we should do whatever is necessary to secure that sort of a court. I remarked to some gentleman that I thought I knew a man in our county who would go on the bench for a dollar a day, and charge nothing when not sitting—but I don't think he would be of any service there. I trust in acting on a matter of this sort, we will be governed by our own judgments, based on our knowledge and experience. I care not what may be the first

impression or the clamor of the people I represent on this question when I know I am doing what is for their best interests; and I will dare to face them and show them so; and if I cannot do it, I will resign and let somebody else. I trust we are not to form a constitution here based on the idea that we are to keep an ear to the ground to discover what is the fragmentary and momentary popular whim in regard to every regulation that it is our duty to consider and formulate. We come here to consult, to compare views, to inform ourselves and then act upon our best judgment. How can the people scattered over the country, without special information or means of obtaining it in regard to many of the problems we have to solve, be prepared to form conclusions to govern our action? This is not a popular, representative body in the same sense as a legislative house. We are selected to do a peculiar and fundamental work. The great body of the people who chose us understand the fundamental features which they desire us to embody in the Constitution we are to make. They cannot be familiar with the detail, the adjusting of one to another, the special features that become necessary in harmonizing and adapting, which this body discovers in the process of construction. They have trusted us to do these things in their interest in such ways as we find necessary and best for the purpose. If they do not approve our work when it is done, they have the right to reject it. I know we will consider well all these things before we act, knowing that as we fix it so it must remain.

On motion of Mr. Hagar, the Convention adjourned.

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XXXVIII: SATURDAY, JANUARY 25, 1862

The Convention assembled at the usual hour and was opened with prayer by Rev. Robert Hagar, member from Boone.

Journal read and approved.

THE PRESIDENT. When the Convention adjourned, it had under consideration the adoption of the amendment to the amendment, which was the proposition of the gentleman from Hancock to insert $1800, in lieu of $1600, as the salary of circuit judges.

MR. STEVENSON of Wood. I did not intend, Mr. President, to say anything more on this subject until the gentleman from Hancock and the gentleman from Marion jumped on me last evening. I do not know but a few words of reply, if I recollect what those gentlemen said is due to the position I have occupied in reference to salaries. It is very evident from the course those gentlemen pursued that they were conscious they were combating a position which was a strong one; and I believe I shall say but little about the personal allusions which they saw proper to make to myself when they thought it would be more consistent in me to say something about my own salary and reduce myself to living upon weak tea and coffee. I shall not say, sir, that those gentlemen have not been consistent in their course in reference to this matter of salaries. That is a matter to be determined by themselves and by the Convention in their course on these questions and when the votes are canvassed. I will say they have been consistent members so far as I can recollect as far as possible for members of this Convention to be, and I think they have performed their duties as faithfully probably as could be desired. They may have made some mistakes, like the rest of us. I am afraid they are about perpetrating a mistake now. But, sir, the gentleman from Hancock in the course of his remarks undertook to establish here by quoting from scripture that it would be right to give these circuit judges $1600 a year and mileage—about $1800. He quoted something like this. "The laborer is worthy of his hire." Well, now, I suppose on that question we all agree that the laborer is worthy of his hire; and we propose to give him a full compensation for all the labor he performs. But what did the gentleman from Hancock tell us almost as soon as he had made his scripture quotation and applied it as an argument in favor of giving these salaries of $1800 to the circuit judges? Why that one-half the men in the United States did not make $400 a year. And yet, sir, the drift of the gentleman's discourse was this, that this large multitude of people, of honest people, of laboring people, farmers and mechanics of this country, and of men in other occupations who had to support themselves and families, feed, clothe and educate them had to do it upon less than $400 a year, and were to be taxed to pay judges the snug little sum of $1600 or $1800 a year. Now, I put this question to the gentleman from Hancock. If it is true that a judge cannot live upon $1600 a year—and that declaration has been made here, and the gentleman from Hancock seemed to convey that idea, what is going to become of this multitude of men in our nation who live

upon $400 a year? If a judge is likely to starve to death on $1600 a year, I put the question whether this large multitude of working people who get less than $400 had not better be hunting up the grave-digger as soon as possible, if there is anything in that argument? Let me say to these gentlemen, let it be distinctly understood that when they used the words, parsimonious, penurious and stingy that they do not reply to the argument on this side of the question. We do not advocate anything of that kind. We do not wish to maintain the position that this new State shall be parsimonious, or penurious or stingy in regard to its public officers. Nothing of the kind, sir. We maintain that they shall receive a fair compensation for the labor they honestly perform.

Now, sir, that seems to me to have been about all that was said in reference to this matter by the gentleman from Hancock; and I commend to that gentleman the phrase from the Scotch poet. It doesn't apply to his case now; I hope it won't during the progress of this discussion. But at least what I shall quote will be for his advantage.

"E'en ministers they ha' been kenned
In holy rapture,
A rousing whid at times to vend
And nail it wi' the scripture."

Now, the gentleman from Marion, made a very modest but a less pious allusion to the tea and coffee, and the gentleman from Wood undertook, at great length and breadth to spread himself on this matter of salary, and what does he tell us? Why, sir, that it was necessary to have a pure judiciary; to have men on the bench of good legal abilities, qualified to discharge the duties of that office. Well, who denies that position? Don't we all agree with the gentleman from Marion, who tells us they should have competent and good salaries in order to secure that class of men? We agree with the gentleman from Marion, sir—all of us. There is no dispute upon the questions generally contended for in the very long and eloquent speech which the gentleman gave us yesterday evening. Where do we differ? Why, simply upon this: that $1600 with mileage is or is not a sufficient compensation to pay a judge for the discharge of his duties and to secure the services of competent men on the bench. I submitted yesterday to this Convention a fact which I believe can be established by the history of jurisprudence in this country and probably others: that extravagantly

high salaries either in that department of the government or in the legislative department, do not, as a rule, produce any better talent than moderate but proper salaries do. It just narrows itself down to this question after all: is this amount proposed by the gentleman from Doddridge a sufficient amount to compensate a judge for the discharge of his duty; will it secure in this new State such persons to occupy that position and discharge those duties? I alluded yesterday to a fact which had come within my own observation, and since that time I have thought of a number of facts of the same kind or of a similar kind that I had known, of good legal abilities in very populous parts of this country, whose courts sat six, eight or nine months in the year discharging the duties faithfully and well on a salary of $1500 a year, without any mileage attached to it. That was a low salary, I will admit—probably too low; but these were in wealthy and populous portions of the old state. Now $1600 a year is over $5 a day for every working day in the year. If you add to it the expenses of travel, it will probably be $6 a day for the working days. Therefore, if a judge occupied his whole time the whole twelve months in the discharge of his official duties the receipts for every day's labor which he performs is pretty near $6; and if he only occupies half of that time—and I apprehend that in many of these districts which we are making they will not be occupied more than half, he will receive from eleven to twelve dollars per day for the actual labor which he performs. When you take into consideration the condition of our new State, when you consider the fact that we are a new State, a comparatively unsettled State; that our people are poor; that our State is poor, you must take into consideration the fact that the salaries of public officers should be accommodated, at least to some extent, to the ability of our people to pay them. Gentlemen have said here that it is impossible for a man to live respectably and comfortably upon $1600 or $2000 a year. I think that is a mistake. I know it is difficult for some men to live on $16,000 a year; but are we to measure a standard of paying our public men because the vanity and pride and extravagance of the age leads our men in public positions to squander the livings they receive from the people of the State? It is not a correct principle, sir. I maintain that a man can live well and respectably—I think the gentleman from Hancock proved it, for I think more than one-half the men in this country probably live pretty respectably, and I think they live on less than $400 a year. I think a man can live respectably and comfortably, at least, that is as long as wheat is sixty cents a bushel

and corn from twenty to twenty-five cents raised by a farmer who thinks he is fortunate when he has any wheat that is not destroyed by the weevil or any potatoes that escape the rot. As I said, we are a plain and poor people; a poor State; and our judges should be plain men, economical men as well as intelligent men—plain and economical, like the people whose business they perform.

But it is said again that the amount between $2500 and $2000, or between $2000 and $1600, so inconsequent it is scarcely worth contending about. Let us see how that works by reducing the salary of the supreme judges from $2500 to $2000. You gain in a single term of this court $18,000 for the people; and in these nine judicial districts which you propose to establish, by reducing from $2000 to $1600 you save $21,600 to the people, or nearly $40,000 in those two courts alone for a single term of the judges. I say we are not to stop here if we are to carry out the wishes of the people. That is what we are here for, not to consult our own private opinions on the matters of this or any other kind that come before this Convention, but to represent the entire people within the limits of this new State; and whatever the people demand, we are in honor and interest bound to incorporate in this Constitution. I want this principle of economy applied to the governor and secretary of the commonwealth, to the state auditor, the state treasurer, the members of the legislature. You have applied it there already with a vengeance. I want it applied then down from the state departments through all the county and township organization in this State; and when you have applied the principle of economy in all these departments, you will find it is no inconsequent sum that is saved to the people; that instead of being $40,000 it will within the longest term I have named be several hundred thousand dollars—a little fund to be kept for these poor men who live on $300 a year or to be appropriated to the treasury of the State.

But we were told by the gentleman from Marion that we were not here to represent the people of the State; and, furthermore, that a man who would not go contrary to the wishes of the people when the opinions of his constituents ran counter to his was not fit to be a representative of the people on the floor of this Convention. In this the gentleman is entirely mistaken. That is the vital life-giving principle of every republic on the face of the earth—the principle of representation. All the people cannot go to the legislature, all the people cannot go to Congress; all the people cannot assemble in state convention. Well, what are they to do? They

are to select one or more of their own number to come here into this Convention to represent them (the people) not their own opinions, because my opinion is my own individual opinion and is worth no more than that of any one of my constituents. The representative is a sort of embodiment of the people of his district; and he is not faithful in the discharge of his duties if he undertakes to run contrary to the interests and opinions of the people in that district. Some gentlemen say, if I come to a question on which I differ with my people, what am I to do, go with my people and sacrifice my conscience? No, you need not do that; resign your seat and go home if you cannot act consistently with the opinions and interests of the people who sent you here, and bide your time until the people come up to your standard, and let the people send a man here who will represent their interests. Why, sir, that is the very doctrine that has led to the rebellion in our midst, where the secession doctrine has plunged the country into the red sea of secession and civil war. They did not act upon the opinions of the people. Do you suppose in those states that have seceded, any one out of every half-dozen of them, or probably one in the whole number, would have undertaken to break up this government if they had been consulted? No, sir; the men who met in convention, like my friend from Marion, set up the doctrine that they were to exercise their own judgment, not to represent the judgment of the people on these great questions; and therefore they undertook to break up and destroy the government. We sent to Richmond about a year ago a number of men pledged by the vote of the people—by an overwhelming vote— in favor of the preservation of the Union of these states and opposed to this secession and rebellion on the part of South Carolina. That was the clearly expressed opinion of the people; but when that Convention got there they undertook to say that it was not the duty of a representative to carry out the wishes of the people; that they knew more than the people and they would insist upon their own private judgment of these great national questions in opposition to the people who had sent them there. The result is seen amongst us. The state seceded; the state was plunged into civil war; and now that war is raging and likely to rage within the borders of this state for a long time to come.

I want to be consistent in this matter. I want to know what good reason there is why the judiciary should be made an exception from the working application of this principle. We reduced here in accordance with this principle the per diem of the legislature. But the gentlemen tell us the members of the legislature

if they get enough to pay their expenses ought to be willing to go and make laws for the State and leave their families at home, living upon what, if this pays only the expenses of the member? You shut out every poor man in the State from ever being a member of the legislature, if it was true; but I don't believe it is true, because I believe three dollars a day will pay them pretty well. They say this principle does not apply with the same force to the members of the legislature. I want to know why it does not apply with as much force to the men who make the laws as to those who administer or those who interpret the laws? If it applies to the auditor of the state who has the control and watching of the money of the people, to the treasurer of the state, to the secretary of the commonwealth, why doesn't it apply with equal force to the judiciary? If it is true that the salary of the governor must be reduced on this principle, a man who is required to have as good an intellect, as good a head and as good a heart as any other man in public position—the man who is to execute these laws that are made by the legislature and watch generally over the necessities of the people—if this doctrine is to apply to the governor of the state and the other executive officers, and from that down to sheriffs, justices of the peace and constables, throughout the whole ramifications of this township, county and state organization, I want to know why it shall not apply with the same force to the judiciary of the State?

These are the reasons why I am in favor of giving, not a penurious salary, not disposed to be parsimonious or stingy, but taking into consideration the condition of our people, the fact that our farmers have lost their crops for the last three or four years, the civil war now raging in the state for a year past and likely to be for a long time to come, which has paralyzed and in some cases almost destroyed the industries of the state—taking these things into consideration, it seems to me that $5 or $6 or $7 a day ought to satisfy such gentlemen as aspire to fill the position of judge within the limits of this State.

MR. POMEROY. I suppose it would be proper that I should say something in reply to this speech just made by the gentleman from Wood. I might very appropriately quote another passage of scripture: that it is a good thing to be zealously affected always in a good cause. Now the gentleman's cause is good. It is well to be zealous in it; but I have my doubts whether this is a very good cause in which the gentleman from Wood manifests so much zeal

at the present time in regard to replying to the argument in reference to the $400 that I stated last evening. I do not think the gentleman made that argument until I admitted, as a man who professes to speak the truth—what I believe to be true—that a majority of the people of the United States does not really make $400 a year; and that therefore I did not see the propriety of making the distinction, to the amount equal to the yearly earnings of more than half the people of the United States, between two officers, the one to whom it was proposed to give the least salary performing more labor and deserving a larger salary than the other. I do not believe and never have been convinced to the contrary by any statement made on this floor, nor anything I have read in the past history of the country, that a court of appeals has a tithe of the labor to perform that a circuit judge has, his jurisdiction extending over a number of counties and being obliged to hold a number of courts in each county each year. I believe that as far as actual labor—by that I mean equal physical and mental labor—because, as has been stated by the gentleman from Kanawha, there is an amount of physical labor in traveling over these circuits so frequently as these judges are obliged to do—far beyond what is required of the judges of the court of appeals; and of mental labor I aver that there is as much in the one case as in the other and it is far more vexatious and trying in the circumstances in which the circuit judges have to do theirs than in the other court where the judges can take their comfortable leisure for their research and study. Therefore I could not see the propriety of making the difference of $400 against the more laborious class of judges. This argument—let it be much or little—that having reduced the supreme court judges to $2000, a corresponding reduction must be made in the others does not appeal to my sense of justice. I voted for the reduction of the appeal judges because I considered $2000 sufficient for them. Now it is proposed that for the mere purpose of showing apparently to the world that there is a great difference between the two courts, we shall make a difference of $400? I do not believe there is any need for that amount of difference. I think $200 is sufficient; hence I proposed to make this salary $1800. The gentleman from Wood appears to think because some of us—and I suppose, of course, he means me—have voted low salaries—that is, to make salaries sufficiently high to give the man a fair and adequate compensation for the services rendered—we ought to be willing to make a general level of compensation that shall be fixed with reference to the low scale of pay which the vast body of agri-

cultural and other laborers are obliged to accept all over the country. I do not believe that to be true. I believe a man ought to have a fair compensation and nothing more for what labor he performs. If a certain service is to be performed and a suitable man who can do the work cannot be employed to do it below a certain price, you have got to pay that price. And here comes in the law of supply and demand, in which we are all bound. The great body of the people who have only rude and unskilled labor for sale, having always a supply of this kind of labor about equal to the demand, are obliged under the inexorable operation of this law to accept a low scale of wages; and since they cannot command a higher, they must adapt their manner of living to that low rate of compensation. They must live on what they earn, whether it be $400 a year or less. They must live simply on coarse food, wear plain clothing and do without luxuries and refinements, travel, fine clothes, music, amusements, expensive food and domestic surroundings, which constitute the greater part of the cost of living for the wealthier classes. If you have work to do that requires special skill or learning, the number who can do the work is comparatively small, and you must pay higher wages; and so on up to the highest requirements, where learning, experience, talents and special mental equipments are required, where you must pay the price or accept a lower grade of service. Because the great body of the laboring people—the people who labor with their hands and bodies—can command only $400 a year, it does not follow that men in the arts of men of education and special skill in the professions like medicine, surgery or the law can be found to work in their line for a similar low level of pay. These things are regulated and graduated by laws that none of us can control—before the edicts of which legislatures and conventions are as powerless as individuals. We can only recognize the operations of these laws and adapt ourselves to their requirements.

But we are told that in the olden time the salaries were less. So was everything else. So was the scale of living at a lower rate. A man could live on far less money than he can now. The advancement of things in the country, the progress in human affairs have raised at the same time the wages of men and the cost of living. What would have seemed extravagant prices twenty or even ten years ago, have become necessities on account of this upward trend. Time was when a man thought he had made a good bargain as a day laborer if he could get a hundred dollars a year. How is it now? A higher scale of prices is established in the country everywhere. The

trend is upward, and we cannot foresee how much higher the general level of prices and cost of subsistence may be in the next five or ten years. This ought to be considered when we are naming fixed salaries in this Constitution, which cannot be changed except by amendment or another convention.

Regarding the argument that the judges' salaries ought to be low because we propose to reduce the salary of the governor. Has any governor one-tenth part of the labor to perform that a circuit judge has? In a time of peace he has very little labor of any kind, either physical or mental. The honor of being governor is worth something. While I will not say that I will vote for a low salary for the governor, I believe in time of peace he is one of the merest walking-sticks. The Governor of Rhode Island has not been in the state for months. There is nothing to do; no business to transact. The legislature meets twice a year, and what has the governor to perform? They give him but $400 salary, it is true, because he has no labor to perform. Some wealthy man is generally elected solely on account of the honor. A great many people don't know any difference between the Governor of Rhode Island and the Governor of New York; and he gets as much credit as if he were governor of the greater state with the masses of the people.

Now, I believe we have said it is perfectly right to give the supreme judges $2000. Since then, we ought to give the circuit judges at least $1800, and that is my motion. I have no particular zeal because I made the motion. I thought there was a disposition on the part of my friends to go too low and I wished to come in and compromise between those two numbers and say $1800. You may say $200 is a small difference but it goes a good ways in covering a man's expenses. I believe a man can live on $1800 a year. But that is not the question. The question is having settled on $2000 on a principle which I believe to be correct, that a man ought to be rewarded in accordance with the kind and amount of labor performed, and as a judge would have to break away from his practice of law, cannot practice during the time he is on the bench and cannot immediately resume his practice when he leaves the bench, I say he should be paid accordingly. Every man who lives honestly and uprightly in this land, I don't care what his profession is, ought to make more than a living—ought to lay by something for a wet day, for the time he is unable to work. If a man's mind is harassed with anxieties about the subsistence of his family he is not in condition to prepare and render law decisions, which require a serene and clear head. A man must have good spirits to perform his

duties in the best way. I do not want to refer much to the scripture but I can show that by the scripture. When a man is in a jovial state of mind, he can perform his duties right—not when depressed and sunken down. If you want the soldiers to do any good on the field of battle you must have them all in good spirits; think they are going to accomplish something that they are going home to tell their wives and daughters of what they accomplished on the field of battle; and they must be cheered up by their leader and urged that there is a chance for a glorious victory. As the gentleman from Marion (Mr. Haymond) says "the stars and stripes"— and thus you make the man. So with the judge on the bench. He may not be in good spirits. He may feel that he is going along with poverty staring him in the face, and has no heart for his work and cannot do it well. Therefore I say he ought to have more than a bare living while he serves the people—the dear people. Well, I represent a very plain people; I represent a generous people. They never said a word to me on the subjct of the judges' salaries; to increase or decrease. There are other subjects they did speak on but never spoke on that subject at all. I do not believe the people are going to find any fault with this provision in the Constitution to give judges $1800. I understand some gentlemen are not satisfied with the amendment of the gentleman from Doddridge but wish it had been even a less sum. Now, I believe a man may be too penurious; he can go too far in the matter of saving; go that far that it is likely to do an injury to him. No necessity of doing that. While there is many a man, as I remarked in a jocular way about drinking weak coffee and tea who allows his mania for saving carry him to extremes of petty economies like that, in the belief that he is economizing. It is a mistake. That kind of thing is not economy. That is not what economy means. Economy is the wise investment of money so that more than you put in will come back to you. It is in buying the thing that will give the best results, not the worst. It is the results we are after. Mere penuriousness is not consistent with this kind of economy. There are families living in this country that are a disgrace to the human family just on account of their penuriousness. They don't take the good of the things of this world as we are commanded to do. We certainly don't want a man on the bench that will violate the plainest rules of the best book in the world for a judge. We want a man of liberal principles, of good intellect, good learning, well qualified to decide the cases that come before him and I wish to give him a suitable compensation; and in my humble opinion $1800 is

sufficient and is not too much. Then the mileage comes in, of course.

They say the State is too poor. Well, I am not ready to admit that. I think there is more money in the treasury today than most of the states of the Union. Where is the evidence of our poverty? There is no public improvement that money has been appropriated to; and under the new State Constitution none can be; no waste of money without unwise legislation on our part. If we run into unnecessary expense we may become involved in debt. But go to our treasury: our treasury officers promptly pay all proper demands. We will be a prosperous people if we adopt the right kind of policy; if we be consistent and make a liberal constitution; one that will be beneficial to those that rule and those that are ruled over; make it with wise and suitable provisions to prevent fraud and everything of that kind from being practiced on us as in past legislation. I see no reason why we should be a poor people but do see reasons why we might rise in prosperity and in wealth and become a great people. With the right kind of policies I know we will.

MR. HAYMOND. I always regretted to lose a good friend. The gentleman from Hancock told us last evening he was going to leave us. I bid him good-bye, but I am in hopes he will be with us by Monday. But in losing him, our undoubted friend from Doddridge has taken us by the hand. Mr. President, I am entirely with my friend from Wood on this subject. I agree with him entirely, and I am with my friend from Doddridge in placing this salary at $1600 for the reason that we are not able to pay anymore, which I expect to show. I am for that salary because I believe we can employ the best men in the State of West Virginia for that sum. I am certain of it. Mr. President, we are about to start a new State here, a new government. We have our public buildings to build. It will be expensive. We have a public debt hanging over us. The State of Virginia has now a public debt of about $50,000,000. We shall have our proportion of it to pay. It will be not less than $5,000,000 to $8,000,000. Our taxes are now high. We are unable to pay them. We are at war now and endeavoring to down one of the most unholy rebellions that ever existed in any country. We have an army in the field of upwards of half a million of people with an expense of upwards of $1,000,000 a day. Sir, where is this to carry us?—$1,000,000 a day! Sirs, should we not be looking to economy? This $1,000,000 will lead us we know not where.

It is the argument on the other side that we are for the people and that we cannot get the good men unless we pay them high; that the office lawyers are so great, that they are making so much money that they will not abandon their practice for the judgeships unless we pay them highly. Sir, I have never seen many lawyers in this country become very wealthy. I believe this thing of their getting such high fees and making so much money is all a humbug (Laughter). I have no doubt I can employ this day any man in West Virginia for $1500 to practice law for me in all cases; and therefore I think he would be willing to accept a judgeship at $1600.

My friend from Hancock said we had more money in the treasury than any state in this Union. That is a strange doctrine here for a man to believe. Virginia got more money in the treasury than any state in this Union—$50,000,000 in debt! And cannot borrow another dollar to save her soul (Laughter). I would like to know where the gentleman got his information from. It is argued on the other side that we are for the people. Sir, whom ought we to be for? Gentlemen, the people sent us here. Whom are we to go for if we do not go for the people? I am proud to say, sir, that I am for the people and nobody else, and when I cease to follow them I wish to be cut out of existence in this session.

I am in hopes, sir, a salary will be fixed at $1600. $1500 was what I desired, but I am willing to go with my friend from Doddridge in putting it at $1600.

MR. HALL of Marion. I do not desire to occupy the time of the Convention but a few moments, and propose to do so solely with reference to the extraordinary—I say extraordinary—position of my friend from Wood, and perhaps my colleague, endeavored to make me to have occupied last night. I trusted what I had to say, notwithstanding the remark that I made a very long speech, I can claim for myself that if I do sometimes, if I am justly chargeable with having made a long speech I may say to him, if you will put your pieces together it will make a much longer. I trusted I would have the attention of the members and would be able to make myself understood. But this morning I am characterized, not as a friend but as a hanger-on, a tail-end of this very rebellion, as endorsing the very principles on which it is founded and sought to be carried out. I endeavored, as I trust most of the members of the Convention understood me, to correct what I conceived was a wrong premise upon which representative men should stand. I said then and

I say again, and as I shall say in all time, that as a representative man it was not my business and I would not represent the popular whims of my people, or any people; that it was my duty to represent their best interests; and I stated explicitly, as I repeat again—and I cannot understand how it is that the gentleman from Wood understood a part and could not understand the rest. But he must have passed over it by some means. I stated explicitly that whenever my people, or any people, had considered of a question and expressed an opinion that it was the duty of a representative man to represent that opinion or cease to be their representative, just as the gentleman prescribed I should do this morning. The very fact that he prescribes to me just what I declared would be the duty indicates not, however, any wilful misrepresentation of my position. We hear here daily the phrases "our side" and "your side." I do not understand how the lines of that sort are drawn in questions of this sort. The argument seems to be used that because there is a desire that you shall have a cheap government—that is a fact; it does exist and properly; and I concur in that—the idea is that therefore you shall run the thing absolutely in the ground. I draw that distinction. I stand on my position that while I represent the will of a people, that where the people have considered of a question and either instructed me or so expressed it that I know that is their will on deliberation, it is my duty, which I expressed last night and repeat today, to obey the instruction. But I apprehend there are very few members of this Convention whose constituents have such a knowledge of the various questions as they arise here as would enable them to say that they can state what would be their opinion on any particular question, nor have the members here any sufficient means of knowing what are or would be the opinions of their people on unexpected issues that often arise in the course of our proceedings. They may happen to know what opinion is entertained by some particular citizen on some well defined question; but I doubt if even then a member would feel authorized to say that his "people" as a mass, or a majority of them, entertained the same opinion. It is very easy for our own prediliction or opinion to lead us to think the opinion we entertain is the opinion of our "people." The real public opinion is not always a very certain quantity. A few noisy people do not always give expression to the opinion of the majority of people. It is well to be a little cautious about assuming that we are always the exponents of the opinions of our people, in the absence of organized and definite expression. We have a general knowledge

that the people have generally expressed that we want to have an economical government; but we all know that does not mean we are to carry what is called economy to the extent that we shall have no government—a government in incompetent hands that does not serve the purposes of a government. It is for us here to judge what is an economical government; and for one I construe it to mean one that will subserve the purposes of a government efficiently and thoroughly for the smallest practicable expenditure. But efficiency is the first consideration, the cost is secondary. The difference amongst us seems to be chiefly a difference of standards—possibly a difference, too, of what constitutes efficiency.

I trust I am understood. I am satisfied the Convention so understood me last night. I may be the fag end, or the tail end of the rebellion. If so, so be it. I will answer for it.

Allow me to notice another suggestion. When we are talking about these salaries, we are told that by the reduction of the salaries as proposed from $2500 to $2000 we have saved $18,000 to the people. $18,000! Now, I beg gentlemen to just look at the fallacy and consider the merits of the case to which such resorts have to make for argument. Well, now. It is just a question of ciphering. I can work out the problem and make it $18,000, or $36,000, or $365,000, or $365,000,000. I can make a saving of one cent figure up more than the gentleman has claimed here. It is only a question of how long a period you cover with your calculation. So I will not dispute his premises. The point is, is that economy? Will we be representing the best interests of the people we represent by making that reduction? That is the question we have got to answer here. We differ, and I have no doubt honestly; I accord to every gentleman in the house as much honesty and sincerity as I claim myself. I endeavor to show that the amount of money represented by these reductions would not be saved when you make a salary that will not command the best capacity and talent to fill and occupy those positions. We should economize, and I desire to economize. I don't want to occupy the time of this Convention long, for if I do the first thing we will know it will cost more than what would lead to the destruction of your whole judiciary system. I say it is a pittance compared with what you propose to secure by it. The judiciary is one of the most important, indispensable branches of our government. Without it you cannot keep in motion any branch of industry within your limits—I mean without the proper operation of its functions. Therefore it is one of the

most important branches of your government. It is the pilot of your boat.

The gentleman from Wood took a short turn and undertook to cut across ahead of the gentleman from Hancock as he supposed on the declaration that some men did not make $400 a year while other men could not live on $1600. Let me say to my mind there is a fallacy in the argument. You propose to give to your judges, say, $1600 and $2000, and we are answered with the argument that some men do not make $400. Do the men that you expect to make your judges of make $400? And will the judges who get these salaries make $400? What you get and what you make is a very different thing. When the judge has paid the cost of his living will he have $400 left? Yes, you say, unless they are recklessly extravagant. Why is it you give Abraham Lincoln $25,000, while some men only make $400? Because the position the President is called to occupy demands it, because he must support an expense and style of living that other men need not. I apprehend that Abraham Lincoln or any other President has never saved many of these $25,000. Take your judges. You say they ought to live plainly. So they ought. I do not believe in reckless extravagance. I do not believe it is necessary in order to give us a good judiciary that the judges of our courts shall cut any extras at all. But I ask you if the very fact that he is a judge of the court does not indispensably and inevitably add to the expense of his living unless he makes himself liable to the charge of penurious meanness that will be degrading to the position of the office and degrading to you who have placed him there. The dignities of office impose social obligations that cannot be disregarded, and these involve expenses far beyond the simple necessities of a frugal life. The man in official position is the target for everybody who is soliciting money for charity or other meritorious objects. He is bound to respond to applications of this kind, and to maintain a style of living and hospitality not expected or necessary to an individual in private life. I would want our judges to live as becomes their position, not to encourage them in extravagance. But, further, I want to command the services of the ablest and fittest men we can reach—the man, as I remarked last evening, who has the competency, the learning, the practice and experience and the other qualifications to fit him for the position. A man of such qualifications has been very unfortunate if he has not been appreciated by his people to the extent that he has acquired a law practice which it would be a sacrifice to give up to go on the bench for even the salary that

I wish to give him. Well, it is said if this be true, it is because lawyers' fees are too high. Suppose that is a fact, what odds are that? If you want to get a thing done, you must pay the price. The day was when you would only pay nine cents for coffee; now you pay 25 cents, and if we want to be economical we have to weaken it a little. But why do we pay the 25 cents? Because we cannot get it for a lower price. You say you will not pay but 20 cents. Then you must put up with an inferior grade; just as you must do if you want to hire a judge below the market. But if you want to have a court that will be a court, you must pay the market value, and if you fix an unbending figure in the Constitution that is below the market, present or future, you may fail of your object. It is easy for gentlemen to say as my colleague does that a certain price will command the best men in the State. This is mere dogmatism. How do you know that is a fact even today? How do you know it will be true even five years from now? The tendency is already towards a higher scale of prices. Existing economic conditions in the country may greatly increase this movement.

Gentlemen talk about "our side" and the "other side." I suppose there is no part of this Convention that wants to pay enormous fees; that there is but one side on a proposition of that kind. Some gentlemen have been described here as "people's men." Perhaps we have in the Convention a "people's party." It may be the gentleman from Wood is the leader of such a party. They are for reduction and economy in all directions—the gentleman from Hancock suggests even to the quality of their tea and coffee. And that runs back to that other position. I am not afraid to do what I believe to be the best interests of my people; and I am satisfied that while I represent a people who demand at my hands economy, I am sure that I represent no penurious, penny-loving people who will be unwilling to pay what is a fair price for a good article. I know my people well enough to say that they are not of that character.

I am rendering myself liable to the imputation of another long speech. The gentleman from Wood in his zeal to claim to be the discoverer and only exponent of the will of the people represented me as maintaining an attitude that was the germ, the origin and the means by which the rebellion was started; that it was the cry that went forth in the Richmond convention that they were all the wisdom; that the will of the people was not to be consulted; that they did not care what the people desired they were going to pass the ordinance of secession. Now I beg to cor-

rect that impression. I tell you the cry went up there always and the argument urged was that the people demanded secession at our hands; that there was a popular clamor for it, and every day came in long petitions from this, that and the other school-house in which members were instructed to secede at once. That was the argument that broke the ranks and drove us into the sea. Yes, it was that cry and popular clamor. Yes, they came up from the southwest, from the counties of Amelia and all around there; and where anybody doubted their position, they were holding men there and were sending up the cry, secede! Secede! By that means the cables were broken and we were plunged into this rebellion.

Popular clamor is a dangerous weapon; and when men ignore their own right of judgment and individual responsibility to listen to it, great mischief may result. My friend from Doddridge knows how we were bored in that convention by these damnable and interminable cries of popular clamor that came up from these little byways all over the country. Now, it is the duty of a representative of the people to know what is the interest of his people; and when a people have deliberated and indicated their wish, to obey it. But in that convention if I had been told that every man in my county demanded that I should vote for secession, and if I had known it to be true, I would never have done it. I would have resigned. I do not care what the demand of my people is, I will never obey if I think it wrong, but when they demand it I will resign and they may send somebody there who will. I say that while we are looking to the will of the people, we are not to be led by mere popular clamor or popular idea that may be supposed to exist or that may really exist unless we know they have considered deliberately of that matter and know what they do.

I know it is very unpopular. You have to meet this idea of a cheap everything; and that a man who dares open his mouth against it places himself in the hands of a demagogue to hold him up as a mark for denunciation. I am very independent in that respect. If I am worthy of patronage, I shall get it in the line of my profession; and if I get that I shall say thank you, gentlemen, and be content. I am willing to meet any of these influences and do what I believe to be my duty; and whenever my people are dissatisfied, it will afford me a great deal of pleasure to lay down my position here and go home.

We are saddled with this idea, that the laboring men, the taxpayers and their interests are to be consulted; that we are proposing to ride over them; that we are endeavoring to tax them for

this $18,000—this $21,000, that is multiplied by running through a series of years. Now, I am not just like the darkey who maintained the President was his servant and sustained his position by claiming that the President was the servant of the people and that he was the people: I know something about work, about manual labor. I have plowed and dug; I have chopped trees, and rafted logs and run them down the river to market; I have dug coal; I have done this hard rough work more than half my life, and I have tried the profession of the law on the other hand; and I tell you that the farm-work, digging coal and rafting and all that sort of thing is nothing compared with the labor required of a circuit judge. I know something about what their labors must be by my connection and business with them; and I know that in digging coal ten hours a day, I should have lighter labor than I have in the calling I now resort to for a living. I know it is severe labor that we demand of a judge; a responsible position; a position in which his expenditures must be greater than in private life. We must conclude that men are men, and that in order to get a man's services you must pay what he could get elsewhere. A man's services are worth what they will command. I have no personal interest in this matter. On my own account I do not care what you make it. But it is a matter of interest to me and every man that you give us an efficient court.

No man can deny that a man's services are worth what they will command. What inducement has a man to leave a practice of $3000 a year and turn aside for $1600; to throw it down for six years on the bench—to do more work and get half pay? But there is honor in it! Not much under those conditions. You will soon rob the post of that, and then where are you? I want an efficient court, and to that end we may well expend whatever is necessary. I do not want to go one cent beyond that.

I have perhaps made another long speech. I had not intended to open my mouth on this question and should not have done so but for the fact that I saw a disposition to follow whatever may be supposed to be a popular demand for what seemed to me inconsistent with a good judiciary. I know, sir, that you can find men in my county and all over this country who would be willing to require a man to occupy the position of judge and yet would not be willing to pay him over $300 a year. They would say he might live on that and let him do it; but I think this is not the general feeling nor does it extend to any great extent; and while it is a popular cry—cheap government! Cheap everything—yet when you talk about the

practical workings people will require of you such action as will secure a court.

MR. STUART of Doddridge. I do not desire to weary this Convention. It is known to the Convention that I resisted every motion to reduce the compensation of the judges of the supreme court. I was not afraid to go on the record in that. I vote from sentiment, principle, what I think is right. I am not influenced by any outside pressure, and I don't speak here for buncombe. I am governed by what I think is reason. There is some reason when I insist the judges' salaries shall be reduced to $1600. Whether, when I voted to keep the salaries of the judges of the supreme court at $2500, I represented the wish of my constituents, is something I am not yet posted upon. But what the gentleman terms the "whims" I do not know. If he means by "whims" the wish and desire of his people or mine that the salaries may be reduced to $1600, I know that is the whim of my people. I would be for carrying out this whim or resign my position if I did not do it. The people have a right to be heard as much on this question as on any other; and if I think it is their sentiment, their wish, I should reduce these salaries then I am bound in good faith to carry out their wishes. The gentleman is totally mistaken upon the action he has referred to in our convention at Richmond last winter—totally mistaken. I could name gentlemen who represented various districts in northwestern Virginia who were elected as Union men who said their people were not prepared and were not proper judges on this question and they acted on the principle that they knew more than their constituents. Now that is the reason—

MR. HALL of Marion. Did not every secessionist from the northwest openly declare that the whole sentiment of this country was in favor of secession before the ordinance was passed? Did not Turner and Woods and L. S. Hall openly declare that that was the sentiment?

MR. STUART of Doddridge. These men came there and were the very first to speak in the City of Richmond before there was any popular excitement, when they knew they represented Union constituencies and then at that very stage sought to carry this state out of the Union and voted for it. They said they emphatically stood by their people; that their people were not prepared to judge of the question and that they were there to go for themselves and they would act on the principle that they would do what they

thought the necessity of their constituents required at their hands. That is the fact. Had the people not been fooled, there would have been no inducement held out.

But enough of that question. Now, I must be permitted to say that I am somewhat familiar with the labors of these judges, and it seems to me the gentleman has entirely dodged the real question at issue. The real question involved, the one that we should look at, has not been met by the opponents of the motion I have made here—not the least. Let me say, sir, the labors of the judges of the supreme bench are three times as great as the others. With this fact every lawyer who is acquainted with the facts certainly feels willing to testify. The labors of the circuit judges are not nearly so great. The judges of the supreme court day in and day out have to examine and pry into the musty records and revise the decisions of the other courts. Their labors are mental lábors continually and they have no release from it, not even after they are off their duties on the bench. When they retire to their homes, they are there continually and perpetually investigating these rules of supersedeas and other motions made, sir, day in and day out, and I never found an idle moment these judges have had. Their labors are enormous, labors that wear out the constitution of any living man. That is not on the argument, it may be said why not increase their salaries? I was willing to do so; but when you have reduced their salaries to $2000 you must look at this fact: it is necessary to get the best men on the supreme bench, or where will we stand? Absolutely necessary. Unless this Convention now agree to reconsider the vote fixing the salaries of the supreme judges at $2000, it is absolutely necessary that you reduce the salaries of the circuit judges to $1600. Now, unless you want to reconsider that—and I have not heard that question argued here—or have never referred to it—if you fix the salary of circuit judges at $1800 or $2000, do you suppose you will get your best men who will run the risk of going before the entire State and getting their judgeship and assuming labors double those of the circuit judges? No, sir, they will offer their services where there is the least labor and the best pay. Men of reputation, standing and learning would have no difficulty in getting a circuit judgeship while there might be some difficulty in the way if he offered himself for judge of the supreme court. And yet there is no additional compensation to induce him to take this responsibility on himself. It is absolutely that we have a good supreme court bench because we have the very best judges on the circuit, the decisions of the higher court would not command influ-

ence or respect. It would not do to have the lower court better than the higher. This is why I would vote for $1600. Then if you conclude to raise the salaries of the others I would vote to increase the salaries of the circuit judges; but until you do that, I am satisfied the salaries of the circuit judges should be $1600. It has been asserted here that the judges who go upon the bench are entirely dependent upon their salaries for a living. Just the reverse is the case.

MR. HALL of Marion. In reference to the salary when it was $1500. Was not that when they held it at that salary?

MR. STUART of Doddridge. I have not reached that subject at all. You have no right to correct me on that. This motion appears to be predicated on the fact that judges when they are elected are entirely dependent on their salaries for their wants. I say that is not the fact. It is a mistake in nine cases out of ten. When a man is sought for the office of judge, he is a man who has raised to eminence through his practice. His practice has made him independent in almost every case—wealthy and independent. He accepts this for the honor more than for anything else. It is not for the compensation but from the fact that he knows he is qualified and can do honor to the station. It is argued that $1600 will be no inducement; we will not be able to get the services of our best men. Our prosecuting attorney gets no salary at all scarcely—a more pitiful thing. I have in almost every instance found it commands the services of our very best men. Your very best lawyers have heretofore in the State of Virginia been willing to accept the office of prosecuting attorney of your county, when perhaps in many instances they would obtain one fee greater than the pay for an entire year. I was struck with amusement last winter when I was told in Richmond that Robert E. Scott offered his services for prosecuting counsel in his county. He was absolutely defeated—the best lawyer, the soundest and purest mind, I believe, that lives in the borders of Virginia. He would retain a fee one-fourth greater than his entire salary for the year. And why? The reason is that these men are willing to serve the public. They do not feel dependent on a little salary. They do not look at it in that way. They look at the matter of honor and they want to carry out the interest of the people of their country. That is my experience, sir. Now, I am for reducing these salaries as low as possible to reduce them and command the services of your best men. Salaries of $1500 or $1600 have commanded the services of the best men in Virginia. Why will not it do now? The gentleman says because living has

become so expensive. You can live here in West Virginia now much cheaper than you could in east Virginia prior to 1850. I believe we always will be able to do it. Get these services of the ablest and best men. I am not for giving these men such salaries as will induce them to run into luxury and high living. My experience is a man who is judge should live prudently without running into these luxuries. I am not niggardly in my views on this matter. I should think a man should live right but there is no necessity for running into these luxuries and high living. I am for curtailing it if possible, not holding out this inducement to the people to believe that these officers can live better and that they will follow the example of men with high salaries. Why, sir, the officers of the City of Richmond have been paid high salaries, and they have prostituted the morals of our country more than any other. John Letcher and Wise in the last ten years have done more to destroy the morals and injure our country more than any living men I know of—more luxury; more high living; more drinking, and want of attention to public business than I knew any place in my life. These men were given salaries that they were bound to look after these affairs and use economy. Such inducements should not be held out.

Mr. President, I am certainly in favor if the salaries of the judges of the supreme court are to be $2000 of reducing those of the judges of the circuit courts to $1600; unless, gentlemen, you reconsider that motion it is absolutely necessary if you want your best men on the supreme bench.

MR. SOPER. I had expected to give nothing more than a silent vote on this question. So far as the vote has been taken it has been seen that I am with that portion of the house who are for reducing the salary of judges below what is reported by the committee. Perhaps it may be necessary I should offer a word of explanation so as to have it seen what my motives are in the course I have pursued. We all agree it is important for the interests of the country we should have an independent and intelligent judiciary. We are now met with the objection, and it is said, that unless we give the men we wish to elevate to these positions a salary that will be what they consider an equivalent for their services, you cannot get them. I believe the experience of most men who have had an opportunity of witnessing the class of individuals who filled these several positions in the community, will tell you that you will never find any difficulty in getting men of the neces-

sary capacity to fill your offices. We have provided in this Constitution that no man shall be eligible to these offices until he arrives at the age of 35, and we are told here by gentlemen that they have got practice, that there are lawyers in the community that have a practice worth—I have heard one gentleman name; the gentleman from Marion speaks of a practice worth $3000, and that such an individual would not accept of the office. If a man at the age of 35 years, with all the vigor and energies of a good constitution and with a rising family has got a practice of that kind worth double the salary offered, he may feel it for his interest for a few years longer to continue in the practice of the law; but when he arrives at the age of 45 or 50, if he has had such a successful practice as gentlemen speak of here, he will have accumulated a competency sufficient for any man who is not so avaricious as to render life uncomfortable. We all know there is not a more honorable position than that of judge on the bench of our court of appeals, and even of our circuit courts. There is no more honorable position within the state and successful men at this age have no right, surrounded with all the comforts of life to refuse. Gentlemen talk about the lucrative practice of the law. I know there are a few individuals who have this in every state, but it is confined to a very few. Very often men who stand high before the juries of our country and who command the whole range of practice on one side or the other within their counties before the circuit courts—who in the estimation of the people are very learned men in consequence of their fluency and ingenuity and their manner of working on the feelings of the people—I have known men of that description to be considered the most prosperous and flourishing at our circuits. But let me say they are the least competent. You may have a humble individual among you, who may have been living with you eight or ten years who may have been estimated in the eyes of the community far from being a learned man, who from his modesty and industry may have accumulated a store of learning that would well fit him for the bench; and I venture to say our most learned men on the bench were not men who stood high in their practice before juries. I know there is a great difference between men whom our people at large esteem of great capacity and who perhaps are successful men before a jury and when they come before a high court their inefficiency is seen; but it is this man of a clear logical mind and industrious habits, who understands his case and prepares his brief, who has his authorities in hand, who can get up and in a few words addressed to the court present his case in a

clear and logical manner. That class of individuals, so far as I have known anything of them have been men of but moderate practice, who if requested would be very glad to take a position on the bench with a salary of $2000 a year in a matter like this. And they would make the best judges. Just so, sir, in relation to the circuit courts. There are a great many young men—we have in our report provided they shall be eligible at 35—there are a great many young men in the State of Virginia whose minds are not yet developed but who are men of honesty, of purpose, industrious and steady habits, who are probably well-read in the law. Well, now, suppose you place an individual of that kind on the bench. You are putting him in a school of law that will fit and prepare him for the most elevated position in the judiciary of your State; and there are I have no doubt within this State many individuals that will be very glad to assume that position and think themselves well compensated.

Well, now, another thing, I have met and heard a great many lawyers of the best, of very extensive practice, and how much money they are earning, but I have never discovered but one single rule on that subject. A young lawyer—a young man, particularly a lawyer—ought not to consider that he has earned so much money in a year until he has got it in his pocket. He ought not to assert his practice in that way; until he gets the money in his pocket he never knows what he has earned. You place a man on the bench and give him two thousand dollars a year. He goes to the treasury of your State every quarter and draws his money. He is in no ways perplexed or harassed about getting it, or put to any trouble about it. There are many men within the State of Virginia who would give away a practice, fluctuating as it is at the bar, of $3000, with the uncertainty of getting his money for a position on the bench when he could receive without any trouble $2000 in cash in quarterly payments rather than run the risk of getting $3000 scattered all over the country. The same remark applies to the judge of the circuit bench.

In regard to the immense labor of the judges of the court of appeals, when a man goes there his mind is disciplined; it has been his every-day work for years. I know gentlemen are very apt to take up a book of reports and they see a great list of authorities cited, and the superficial reader will say what a wonderful learned man; how much labor that man has expended; only see the number of authorities he cited, I have seen young men who would make the same remark in regard to a lawyer's practice. Well, now,

when they get a little more experience they will find these learned men are not working themselves to death or so hard as many men think. When you go to the rules of our court, you will find in every cause that is presented there for argument the lawyer who appears must have his brief printed. All the judge has to do is to go back to his library and take up the briefs and see which of these gentlemen has been the nearest perfect in his statement of the law that should govern. It is all laid out to his hand. I mean now in almost every case. Now, these gentlemen in this high and elevated position have a regard for their comfort and their health. They know that there is no power upon earth that can compel them to endanger either. And what is the result? Why, you find both in the court of appeals in Virginia and in every other state where you have a man on the bench an accumulation of cases there that it will take probably years to dispose of. Now, how do these gentlemen on the bench proceed? Why, they will hear arguments in cases until they think they have enough to occupy their minds during vacation; and the presiding judge, the chief justice, whoever he may be, after they have a little consultation will hand out to one gentleman and say, "You take that cause," and to another, "You, that and prepare your opinion on the subject," and we will then compare notes and determine the case. Well, now, do you find these men rising early in the morning and going to work, or sitting up at midnight to get at the true points of the case? Why, sir, if that is the character of Virginia judges they are an exception over all other men I ever knew in such position. We say they would decide the cases as fast as they could, and they would have them decided rightly. Now, there are two classes of cases. Probably in one of them the points are so palpable and plain that the judge decided them right off at once, unless the law of Virginia requires that in every case the opinion be written. If so, it is necessary that even in one of those clear cases they hear the argument on one side without hearing counsel on the other. A case is often so plain it is often decided without hearing both sides. And unless there is some statute law in the state which prohibits these quick decisions—unless there is something to prevent it, a great number of cases will be decided in that way. I apprehend a great many of these lawyers who accumulate a sufficiency in life when they get to be 50 years of age would be willing to take a position on the supreme court of this State as one of ease and comfort. Because I lay it down as a rule that a man who has been in the habit of work all his life could not break off and do no work without

being most uncomfortable. He must have something to occupy his mind continually. I apprehend we shall have no difficulty in this State to get men to fill our bench in the supreme court. With the circuit court it may be different. I understand the lawyers in a great many of these counties have entirely left it and it may be some time before we can get good competent men in all the benches of the circuit courts. But if we get difficulty there, we will most assuredly have our court of appeals to correct it.

Something has been said about the will of the people. We ought to represent the wishes of the people. I have got a word or two to say on that. In the county I represent here, the most objection I heard to the new State is this: why, sir, I would like very much to have a new State, but our taxes are heavy and you cannot reorganize a new government here unless you make a very expensive government; and that is in the mouth of every man of secession proclivities, and they are frightening a very great many honest Union men with this plea of expenses that the friends of the new State will necessarily bring upon them. Well, sir, that objection, of public opinion, is entitled to a great deal of respect and it becomes us to be careful to see how we act so that we do not give the enemies of the new State this weighty argument to act against us. Now suppose we are met by the people below, and we go to them on the subject of the judiciary. Why, sir, we will be told, here is the whole State of Virginia, a million and a half of people, and here are five judges of a court of appeals and you give those judges $3000 a year—$15,000 a year. You have taken less than one-third the territory of Virginia, with less than one-third the population or wealth. You have given us three judges of appeals. It is true you give us but $2000, but that amounts to $6000, whereas, the one-third of the court of appeals of the old state would only amount to $5000. Gentlemen, you see the argument before the people will be against us. Come to your circuit judges. We had under the old arrangement within the territory of this new State four circuit judges, at $2000 apiece, amounting to $8000. We have now nine circuits and we propose to give these judges $2000 each—$18,000. You see what an advantage they are going to get over us; and unless we can get the aid of the people we never can get our Constitution ratified. I want gentlemen to look at this thing. The people thought one-half of these circuit courts would have been sufficient to do the business. I go further. If I could carry out my views, I would have about five or seven judges on the bench of the supreme court and give them $2000 apiece and would have

required these gentlemen to hold the circuits as well as decide cases on an appeal. I believe where that system has been adopted fewer cases are taken up; the people are more satisfied with the decision of them at the circuit, and when they are taken up they are as well disposed of as they will be under the system we are about to initiate. Aside from all that, sir—which is not before the Convention—I am now meeting it just as we have got it, and I call the attention of gentlemen to the extravagant arrangement of the judiciary we have got here under our new State organization compared with what it was under the old constitution. We may be told that the only ground that we can stand upon is that we have thrown aside our county court and organized justices of the peace and that we have given them jurisdiction to $100 if the people wish it. Well, we will be told you have got concurrent jurisdiction to the circuit court, or more probably that the people will have their choice on this subject and they can go into which court they please, and it will greatly reduce the business of our circuit courts, and we will then be able to say we have dispensed with the expense, to some extent, of the county court but which we will account for in this increase of the salaries. There is no other argument we can resort to, sir. But how will we be met on that subject? Why, we will be told that instead of taking, in Tyler, 16 judges out there, $3 a day, we ought to have taken and curtailed their expenses, and instead of having five judges at each quarterly term you ought to have had a less number, and instead of monthly terms you ought to have had them, probably, quarterly. We will be told all this. We have got difficulties on every hand to put it in the most favorable point of view that gentlemen can before the people. I wish, sir, there could be some discretion given to the legislature on this subject; so that if our system should be found not to work well—and if this matter of dollars and cents is to be the controlling influence in order to get competent men, if the people at large learn that it is —they would have an opportunity of doing it. We must not forget that we have not got a wealthy country. If the resources are here, buried in the earth, they have never been brought out. It will require great labor and expenditure of money before these rich physical resources which we suppose are buried in our mountains are developed. But I tell you, from present appearances, take the territory of western Virginia and it is a very poor country and hard to live in. It is an unfavorable country on first view, and we have men that want to leave the farms, and leave there. I say we are comparatively a poor people and ought to

economize; and I believe if men had the real and proper feelings in order to bring out the resources of this country, our best men would be willing to fill these places at even half those prices. I grant you, sir, the grasping man, the penurious man, the avaricious man, would not do it; but the man who possesses the arts to live by using economy if he has got the love of his country and wants to develop the resources of his State would be willing to make the sacrifice, particularly as he advances in years. We have also got to look at the unfortunate condition in which we are now placed. We must not lose sight of that. Even now there are gentlemen sitting here who can attest to the fact that many portions of our country, not very rich at best, have become almost destroyed. The people, we are told, are unable to pay their taxes now. We have got to look at another thing. If we get our new State, there is no telling what amount of debt will be encumbered on it in our settlement with the old state. I am not so sure we are going to be a new State free from debt. I am not in possession of statistics enough to arrive at a conclusion. I hope it will turn out that on an equitable adjustment of this matter we will be free from debt; but there is another point of view in which we must look at it. We have got to pay our proportion of this rebellion and it is constantly increasing and we are told by high authority that the expenses are incurring at the rate of two millions of dollars a day. Well, now, with the depreciation of property in the midst of the prosperous parts of our country, this enormous daily increase of expense—we have got to look at it; and while we hope it may be favorable to us, in its most favorable aspect it will be a burthen on the people and require a great deal of love of country to bear up under it cheerfully. Well, now, sir, we ought not, if our Creator has blessed some men with superior minds and position and has placed them in comfortable circumstances, one of the great objects is to do good to his fellow men; and are we to be told that because those men have been so highly favored by the Creator that the more humble individual shall not ask his services in taking care of the cause of the country? Away with this sort of argument. There is love of country and patriotic feelings where you find the hard hand and willing heart that takes up the musket; but besides, there is an intellectual order of men in the community who will take care of the best interests of this people who are taking care of the liberties of your country. It is for reasons like these that I am for saving these large sums in the salaries of our judges. I would rather vote $1500 than $1600 for the circuit

judge; and I believe I have as great a respect as any man for the independence, honesty and integrity of your judiciary. In these trying times I insist upon it the best men in our country are ready to make sacrifices in any position they can do it and at the same time benefit the country at large. I am for the lowest amount of salary that has been named yet; and I will repeat that if we emerge from the difficulties with which we are surrounded and we become a populous and flourishing and wealthy people, I should like the legislature to have the power of compensating every man and particularly those men who come forward in our day of trial and make sacrifices for the purpose of building up the new government and new State.

MR. VAN WINKLE. Mr. President, it seems to me we have spent an extraordinarily long time on so simple a proposition as this. It seems to me that there could be said all that has been said two or three times over and we ought to be prepared at least to come to a vote. We have expended 45 of our 65 days. Gentlemen can calculate how many we have left. If we go in this way we shall have to make a large addition to the session. I am afraid, sir, there is a little prejudice against my friends, the lawyers, in all this. Now I said against them myself all that can be said against them, and they are not as bad always as I represented them. I know, sir, a great many people have the habit of talking against them as a class who do not mean the half they say. Intellectual abilities are always high-priced in the market, and I think we ought to be willing to give the market price for them. They command the highest prices everywhere; and I do not think there is any place calling for the exercise of more intellectual ability that are so poorly paid as judges of the state courts. Judges of the Supreme Court of the United States get, I believe, $6000 a year. That may serve to help raise the ideas of gentlemen a little. But in reference to the question now pending before us: here is $2000, $1800 and $1600 now proposed. I propose we take the medium sum and get rid of the question. If the vote is taken as I understand it, as it stands now, the first vote will be on $1800. Let those who think we may spend as much money in discussing this court as would be saved, if we discuss it two or three days longer, consider whether they may not be willing to leave their present ideas and come up to this, which is an average. I think, in the first place, that $2000 was sufficiently low, even taking into consideration the present state of the times and the condition of

the State. Other gentlemen think with me, that $2000, as reported by the committee, is as low as it ought to be. Other gentlemen think we might go down to $1500. A third proposition has been made to fix it at $1800. I propose and even solicit the members to let this vote be taken on the $1800. There is no other way to compromise these differences of opinion. A compromise does not mean to go to either extreme, but to go somewhere in the middle. I think we had better vote this question—at any rate come to a vote on it.

MR. BROWN of Kanawha. I beg leave to say a word in conclusion as chairman of the committee. I believe all the gentlemen who have spoken have agreed that the real object is to give a competent salary. I believe all have agreed on that. I have listened to the arguments on both sides and have not heard one that seemed to controvert the proposition that judges, like every other officer, should have a competent salary for the services rendered. The only difference, as the gentleman from Wood remarked, is as to what that competency is. One part of the Convention takes one view; another the other. Now, in adopting a fundamental rule, let us see if we cannot act without making either buncombe speeches or ranging beyond the limits of the question; cannot reach the real question at issue. How are we best to arrive at that fact? Is it to ascertain what men ordinarily receive who are to be called to this office or by looking around seeing what other states give for similar service? Now, I imagine other people do as we do. If Ohio give $3000 and Pennsylvania and Virginia give $3000, and Kentucky the same, I take it this is some evidence to show that the little State of West Virginia, right in the middle, should have some guide. Unless we are wiser than all our neighbors. Well, I presume another thing, that although this little State may be smaller than any of those states, yet a judge under this Constitution will have exactly as much labor to perform as one on any of those states; and therefore on a question of simple remuneration for services rendered would have the identical same claim on his State for a salary that the others would have. Again, I suppose this little State, although she will be small in numbers compared with those larger states, yet she will have a little character and reputation from that glorious commonwealth of which we form a part. I suppose that we are not intending to lay down all that has ever rendered the Commonwealth of Virginia glorious among the commonwealths of this Union. And I imagine there

is another thing, that when we West Virginians shall get together with our neighbors over the river, on one side, or Pennsylvania and Maryland, on the other, or Kentucky on the other, and talk about our officers, these gentlemen will say, "We give these our officers so and so because we think their services are worth it, the West Virginian would feel a little shame crimson his cheek to be compelled to say: "my State gets on with more economy and saves money on her judiciary by requiring the same services for a little less money." I would think the West Virginian would like to stand up and say: "although my State is small she gives a big salary; we do not go on the plan of trying to squeeze out of our officers the same labor for a less price than other people do."

There is another and good argument, economy. I have practiced economy all my life and expect to do it as long as I live. If any gentleman lives plainer than I do, I should like to see him. If any gentleman has a greater contempt for extravagance I should like to have him come forth. But at the same time, gentlemen, there is a principle I have ever acted on, and one that I have never yet seen cause to cast away; and that is, whenever I undertake to do anything, first to determine whether or not the thing was worth doing at all, and if it was then to do it well. If I have anything to get, the first inquiry is, is it worth getting at all, and if it is then to get the best. If I go to buy an article I require, I don't buy until I need it. If I need the article, I want the best of the kind. I have no doubt if my friend from Wood would go up the street into a shoe-shop and ask for the best article and the merchant handed him out a pair of split-leather brogans, he would say, sir, that does not exactly suit me. But, say the merchant, this is the best article, right from the factory. What is the price? A dollar and a half. I will look a little farther. At the next store he tells the merchant he wants the best kind of a shoe. Very well, sir. The merchant shows him a pair just such as he wants, price two dollars and a half. Why, sir, I have just had offered me a pair of the best quality at a dollar and a half, and how is it you propose to ask me a two dollars and a half for the very same kind of an article? Well, now, the man may say, I have made those shoes of the best material and have put on them two days of honest labor and I must have something to live upon; and if you will not give two fifty I will have to take two and a quarter, and if you will not take them at that, I will have to take a dollar and a half. Now, will you in the formation of a constitution deal with your people on this principle?

If you do what is the result? You will soon beget in the minds of your whole people that same kind of a spirit that will be continually impinging on the rights of others—constantly seeking to get everything for a little less than it is worth. Now, I do not understand that is the way a good, magnanimous state—although a small state, and however poor a state—will deal with those whom it calls to the public service. My idea is not to tolerate extravagance anywhere. I utterly repudiate it and have warred against it all my life. At the same time, that same principle which reprobates extravagance always, with an eye single to economy and justice requires me to pay that which is a fair and liberal compensation for services rendered or duties required to be performed. And when you have acted on this principle neither your officers nor people will ever have cause to blush. I can even remember when I was a little child hearing a little coterie of children at school looking through their books and commenting on the salaries paid to officers in the public service, the comments of the little fellows indicating the national spirit of pride in the liberality with which public officers were paid for their services. You will find that feeling in the very lowest orders of society; it grows up with the growth of the people, and the children in the primary schools catch the idea that characterizes the public spirit as exhibited to the world in your constitutions and your manner of dealing with your public officers. Would you prefer to cultivate in the public mind a spirit of niggardly meanness? I trust not. On the contrary I think we should cultivate that which is liberal but reasonable, just and right. The main argument here has been, not what is right, but what will suit the people—what will please them when you go home; not to fix salaries on any recognized principles and exercise your discretion to make your Constitution provide for what is just and right as between the public and its servants. When it comes back to my people they will judge whether I have done my duty; and if I have spoken that which is nearest right, I have that respect for their judgment and their intelligence and justice to believe that they will approve the right; and that when I go back, I will not have to say that I tried to make a constitution that would please my people but to make one that was right, believing they would endorse it because it was right. That is the principle on which I act, and if gentlemen cannot go with me on that principle, then I must go without them. I have had clients employ me on many occasions, and have had some undertake to tell me how to arrange their business. I have said, sir, if you

know how to do this business better than I why not do it yourself. I have had others say, I employ you to do that business to avail myself of your experience and professional services. Don't ask me how to do it; do the best you can. That is what we employ a man for. Then the question arises, what is the price? We have the experience of your committee. It was composed of the usual number of seven gentlemen from all parts of the State, representing perhaps all the interests of the State; who have calmly, deliberately, carefully considered this question and have given you the best judgment they have on the subject. Apart from that, we have detailed to you the experience of all these states around us. Apart from that, look at the labors the judge has to perform. I put the question to the people of West Virginia, is this Convention to act on the principle of the bargain hunter going from shop to shop, trying to jew down the merchants and shop-keepers below a living price, with the idea that we will be "saving" something? Are not we willing to do honestly and right and to be just? I do love Virginia, with all her faults. Everything I have on earth is in Virginia, and with them I expect to live and die. And I have never yet—and I am intimately acquainted with a large portion of the people of Virginia—I have never yet found that people, when put to the test, that they ever failed to give that which was fair and just and right and honest before the world; and I do not believe they will ever flinch under such circumstances. You may call us poor, and in some respect we are poor; but, sir, we are not depraved; and in this case as in every other; and not only in regard to this office but every other office in the State, I do not go on the idea that the low-priced thing is the cheapest; that mere cheapness in price is economy. We want the best article, and it is the public interest to get it and pay a fair price for it. Indeed, it is almost certain—it is certain in nearly all cases—that if you pay a low price you will get a low-priced service, for the valuable men whose services we need will not give you the best years of their life, after long years of preparation and labor to fit them for the work, for inadequate pay. They cannot afford it; we have no right to ask it. I have given you my experience, and the conclusions I derive from it. You are welcome to these for what they are worth.

The question on the adoption of $1800 as the salary for the circuit judges was taken, under a call for the yeas and nays by Mr. Hansley, and resulted as follows:

YEAS—Messrs. John Hall (President), Brown of Kanawha, Brumfield, Battelle, Chapman, Caldwell, Carskadon, Hall of Marion, Harrison, Hervey, Irvine, Lamb, Montague, McCutchen, Parker, Robinson, Ruffner, Stephenson of Clay, Stewart of Wirt, Sheets, Van Winkle, Walker, Warder—23.

NAYS—Messrs. Brown of Preston, Brooks, Cook, Dering, Dille, Dolly, Hansley, Haymond, Hubbs, Hoback, Hagar, Mahon, O'Brien, Parsons, Powell, Sinsel, Simmons, Stevenson of Wood, Stuart of Doddridge, Soper, Taylor, Wilson—22.

So the amendment to the amendment was adopted.

MR. VAN WINKLE. I suppose as the salaries are fixed permanently, the words "and shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office" ought to come out. I suppose these words might be taken out by general consent.

MR. BROWN of Kanawha. I have no objection at all.

There being no objection it was understood the suggestion was adopted.

MR. BROWN of Kanawha. Then I believe the 12th section is in order.

The Secretary reported the section:

"12. No election of judge shall be held within thirty days of the time of holding of elections of President and Vice-President of the United States, or of governor, or lieutenant-governor, or of attorney general, or of members of Congress, or of the legislature."

I wish to propose there, sir, this:

"The regular elections of judges shall be held on the day of the fall township elections," and make it read that "No special election," shall be held within thirty days, etc.

Mr. Van Winkle's amendments were agreed to.

MR. SOPER. I now move to strike out the whole section. I believe it is entirely unnecessary. Leave the elections to be disposed of by the legislature. I have in the course of my life known something of holding those judicial elections, and there is some objection to holding them at the annual elections. The ground on which it was advocated was this: that we ought to be careful to have

our judiciary elected without political preference; so far as our judges are concerned they ought to be kept out of the political contests of the day. But, sir, it was found, and I think it will be found everywhere, that while we are desirous of having our judges elected independent of political considerations, yet it will be almost impossible to do it; and if you have an election for judges who are disconnected from political considerations, you will get very few people out to your election. If you have it on a day separate and distinct from the other elections. In the present state of the country, all party predelictions have been merged into love of country. I do not believe there is a gentleman in this Convention who has not laid aside all former political considerations, looking to the welfare of the country; and when we are going to elect the officers, we will look for the most competent men to fill them. But this state of things will pass away. We shall have peace again, whoever lives to see it, and prosperity in our country, and party lines will be drawn again, in more or less degree, in the election of our judges. The result will be you will find between contending political parties looking forward to fill these vacancies on the bench; and instead of its having a bad influence the influence will be beneficial, because each party will strive to get the most prominent and fit man to fill the office. Therefore, I believe, sir, as far as I can look from experience on this subject, I am certain it is best to have the election of judges at your annual election for State officers, because some of your judges are State officers; others district officers, and you are sure to have the people out at that election. They will then express their opinions on this subject, as intelligently as they will if you have a day set apart exclusively for the election of judges. I should like to see the Convention reconsider the vote fixing these annual elections in the spring of the year and fix it in the forepart of November, so that whenever it comes around it should take place at the same time as the presidential election. It will insure a full attendance of the people. You will therefore upon such elections get the expression of the people much better than you can at any other time. As to the frequency of elections, they ought to be dispensed with whenever they can be. If our new State goes into operation, we will not trespass on the wishes of the people if we have two elections, one in the fall and one in the spring; one for the election of town officers, the other for the election of all other officers. I believe it is best and safest to strike out this section and leave this whole matter to the legislature as they may see fit hereafter.

The motion to strike out section 12 was agreed to.

MR. CALDWELL. I ask permission of the Convention before we proceed further to offer a resolution for the consideration of the Convention.

The Secretary read it:

"Resolved, That from and after this day the per diem of the members of this Convention shall be three dollars."

MR. CALDWELL. I was going to say I think it is evident to all of us that we will not be able to get through with our labors and the discharge of our duties in the forming of this Constitution within the sixty-five days. This suggests to me, what will be our remedy in that event. I have the assurance of members of the legislature that in all probability—and I might go further and make the immediate declaration that there is no probability at all—of the legislature contributing one dollar further towards the expenses of this Convention. Well, sir, if that is the fact and the members of this Convention seem satisfied that within the sixty-five days we cannot complete our labors, what redress have we? I am, sir, not disposed to cut off free discussion on questions that arise of so much importance in the formation of this organic law. I would not be disposed to limit the discussion at all. I have not attempted to do it any way. I think we should have free discussion and it is for the benefit of us all that we may get to right and proper conclusions. Well, sir, this discussion must go on; and from the evidence we have had of the time it takes, and the fact that almost every proposition is contested, that sixty-five days will not be sufficient to complete our labors, the only method then by which we may avoid sitting here after the expiration of the 65 days without any compensation at all will be to reduce our per diem from $4 to $3. It is entirely competent to do it. We may agree, I suppose, to sit here without any compensation, but I think it would be more wise on our part to meet this contingency. The session of the Convention must exceed sixty-five days, and in order that we may not be sitting here without any compensation at all, I trust this resolution will be adopted.

MR. BROWN of Kanawha. I have no doubt, sir, that we have spent in the discussion of the questions before us quite as much as we can save by the proposition for reduction. I am one that desires to practice what I preach. While I have been setting an example in regard to others I think it is but right to begin with

ourselves; and I will very heartily concur with the proposition of the gentleman from Marshall and shall go for it with a great deal of pleasure.

MR. VAN WINKLE. I think I am in favor of this proposition. I do not feel that it would be right for us after having fixed the pay of the members of the legislature hereafter at three dollars a day—having thus given in our verdict that three dollars is sufficient—to exact more ourselves. The thing did not occur to me until the resolution was offered, but now that it has been I could not vote against it conscientiously; and I hope, sir, also in view of the charges, things that have been said elsewhere, about us, we will generally be glad to avail ourselves of this opportunity to show that our object is not a sordid one; that our desire is only to take as much time as may be necessary to perfect this Constitution and not, as has been charged, for the sake of the per diem. By reducing we are consistent with ourselves in coming down to the basis we have passed upon and have set an example for the legislature hereafter, and also giving evidence that we are serious in our votes; that the object is to make and perfect a good constitution, and that we are not seeking for private benefit.

MR. STUART of Doddridge. I want to bring this right home to the gentleman from Marshall; and as I know there are certain gentlemen who this thing operates on more rigidly, I move to amend the motion to say that all members living within one hundred and fifty miles from this place shall be three dollars a day —and that includes myself. These gentlemen who come here a long distance and get no mileage, I do not feel like curtailing them. They have been here but a short time. I will go for even two dollars if the gentleman wants it.

MR. DERING. I am decidedly in favor of the resolution. I don't believe any member of this Convention has come here for the sake of the pay; and I think three dollars a day will pay our expenses and let us go home.

MR. BROWN of Preston. I, too, am heartily in favor of the proposition of the gentleman from Marshall. I think, sir, it is not very consistent for us to preach one thing and practice another. I have no doubt of the fact that after this reduction is made we will still have perhaps enough to pay our board and get home without getting in debt very much. I shall heartily support the resolution.

MR. HERVEY. I want to know whether the proposition before the house is designed simply to use up the $16,500, and in order that we may use up that $16,500 whether we prefer staying here to sitting any place else. And if that is the conclusion, I think we had better put it to vote. If the proposition is just to use up the appropriation without reference to the formation of a constitution, and occupy as much time in Wheeling as possible, why two dollars will accomplish it better than three. But has the fact been demonstrated that there is any propriety in making the proposition now? I was not in when the resolution was offered. I am in favor of economy, but has it been demonstrated that we are not going to have money enough at four dollars per day to make this Constitution, and that it is consequently necessary to reduce the pay in order to string out the time? It strikes me there is no economy in it. If we reduce it to two dollars, the enticements and allurements are so strong they will keep us here until the appropriation is used up at all events. I believe if the resolution is adopted, it will result in loss to the State in the end with ill consequences. I am still of the opinion we can complete this Constitution within the specified time. At all events, the passage of the resolution does nothing more than simply hold out an inducement to the Convention to remain—a longer delay. There is the legislature, sir. Suppose you prolong the time for one, two or three weeks. Is it not a good point to get this Constitution before the people as soon as possible in order that it may be acted on by the people and then presented to Congress? This is just holding out a bait to the Convention—not designedly—not at all, but it must result in that—to prolong the time and finally defeat the Constitution perhaps. I have never thought about it. I have never made the calculation. We have got nearly thirty days to finish up this work. I believe it can be done in that time.

THE PRESIDENT. We have three weeks to-day of working time. I am satisfied the work would be done in that time, but if the pay is reduced the work will not be done within that time, and there is no principle of economy in it. It will not work that result. The appropriation will be used up on the $3 principle, and it will be used up on the $4 principle. That should not be the motive which actuates members here, and I do not suppose it does; but I do think the passage of the resolution will prolong the labors of this Convention, and just in so much tend to defeat the Constitution itself.

The hour having arrived, the Convention took a recess.

AFTERNOON SESSION

The Convention reassembled at the appointed hour.

THE PRESIDENT. When the Convention took a recess it had under consideration the resolution offered by the gentleman from Marshall, with the amendment offered by the gentleman from Doddridge.

MR. STEPHENSON of Clay. I propose to offer a resolution as a substitute for the amendment:

"Resolved, That the President and Secretary of this Convention proceed forthwith to issue certificates to members and officers of the Convention dividing the amount of money appropriated by the legislature for the expenses of the Convention between the said parties without regard to the number of speeches made, and that the Convention hereby pledge themselves to remain and complete the work for which we were convened." (Merriment.)

If any gentleman has any proposition to offer that would be more likely to get the votes of a majority of the Convention—as the object seems to be that there is a certain amount of money and that amount must be expended and that it must be made to last as long as possible—now, if any gentleman has a proposition that will more readily effect the object—

On call from several members, the Secretary read the resolution again.

MR. VAN WINKLE. I think the resolution should be printed —for the information of the Convention, and the rest of mankind.

MR. SOPER. I move to lay the whole subject on the table.

MR. BATTELLE. I move, as an amendment, that the resolution last offered be laid on the table.

MR. STUART of Doddridge. You cannot lay an amendment to an amendment on the table without laying the whole subject on the table, because you cannot consider the amendment until you first consider the amendment to it. Consequently if you lay the substitute on the table, the whole subject goes with it.

MR. BATTELLE. It is perfectly competent for the Convention to lay not only an amendment but an amendment to an amend-

ment on the table. My motion is to lay the amendment to the amendment, viz: the proposition last offered, on the table.

MR. VAN WINKLE. A resolution was pending before this body, and now another resolution is offered and received by the Chair. I say that is out of order.

THE PRESIDENT. This is offered as a substitute, of course, and the motion of the gentleman from Ohio is to lay the motion of the gentleman from Clay—lay the whole—on the table.

MR. VAN WINKLE. That is an indispensable motion.

THE PRESIDENT. Then the gentleman from Ohio moves to amend that by just laying the substitute on the table.

MR. VAN WINKLE. It is certainly in order to amend the motion to lay on the table.

THE PRESIDENT. That is what the Chair had decided, and the gentleman from Doddridge, however, raised the point of order.

MR. HALL of Marion. I am not a parliamentarian, but I have always understood that when you carry any addition to a proposition to the table it all necessarily goes with it. Otherwise you defeat the proposition by indirection. That is the inevitable consequence. The vote to lay this on the table carries the whole subject to the table. There can be no doubt of that proposition.

THE PRESIDENT. This it is supposed is an independent paper.

MR. HALL of Marion. The substitute is an amendment, and if you propose to lay an amendment on the table and leave the subject—the original motion and other amendments before the Convention, it is equivalent to laying an amendment on the table and proceeding with the rest of the subject. I meant in my former remark, with all due deference, that it is not a new proposition but is an amendment proposed to the original motion although you may call it a substitute.

MR. BATTELLE. I do not profess to be a very skillful parliamentarian but I must insist that where a proposition is pending before a deliberative body and an amendment to that proposition is made, it is perfectly competent for the body without touching that proposition at all to lay the amendment on the table. If a substitute is offered for that amendment as in this case—it is

competent to lay the substitute on the table, without affecting the original proposition.

MR. HALL of Marion. If a substitute is an amendment and if it is in order by motion to lay that substitute on the table—which motion is not debatable—is not that equivalent to cutting off debate on an amendment in order to avoid discussion on the merits of the amendment?

MR. BATTELLE. No doubt at all; but in fact the motion to lay on the table cuts off debate and can be made with reference to any question pending whatever.

MR. HALL of Marion. It is entirely proper to cut off debate by such a motion when the subject is thus put aside or disposed of either temporarily or permanently. But here it is proposed not to dispose of the subject in this way, for the subject is to remain before the Convention and be acted on—to be disposed of in some other way; but this particular amendment, which may or may not have merit, we are to be forbidden to discuss by an unparliamentary use of the motion to table. This expedient is to be used to cut off debate on a germane proposition while the consideration of the original and all other propositions in reference to the main subject is to go on. That will not do.

THE PRESIDENT. The Chair would remark and hopes it will not be taken unkindly that this question seems to be one in which the house is rather disposed to joke and would be pleased to see them vote without talking to the subject much, which it does not matter very much about.

The question is on the adoption of the motion of the gentleman from Ohio.

MR. BROWN of Kanawha. If I vote for laying the question on the table I should like to know whether that lays the substitute on the table or the whole subject?

THE PRESIDENT. The effect will be to lay the substitute on the table and leave the balance of it.

MR. STUART of Doddridge. Let me further inquire whether the original proposition would then be pending. If you adopt that resolution and there is a pending amendment on the table, not disposed of, it could not be a permanent resolution of this body—

rather not a conclusive one—while that amendment was there on the table.

THE PRESIDENT. The question then would be on adopting the motion of the gentleman from Tyler, to lay the whole subject on the table.

MR. STUART of Doddridge. Suppose the motion of the gentleman from Tyler is not carried?

THE PRESIDENT. It would leave the resolution just where it was before.

MR. STUART of Doddridge. Then if the amendment to the resolution is voted down, the question comes up on the subject of the proposition. Then suppose that proposition would be adopted with an amendment pending yet lying on the table?

MR. BATTELLE. If you please, it is on the table and will lie there till doomsday.

MR. STUART of Doddridge. It would derange the entire order of things if that substitute was finally adopted.

MR. STEPHENSON of Clay. Having attained my object in consuming a considerable amount of debate, I withdraw the substitute.

MR. BROWN of Kanawha. Let us have the ayes and noes on that. I understand the proposition is to lay this whole subject on the table.

The vote was taken and resulted as follows:

YEAS—Messrs. Brumfield, Chapman, Carskadon, Hansley, Hoback, Irvine, Parsons, Powell, Simmons, Stuart of Doddridge, Soper, Taylor, Warder—13.

NAYS—Messrs. John Hall (President), Brown of Kanawha, Brown of Preston, Brooks, Battelle, Cook, Dering, Dolly, Hall of Marion, Haymond, Harrison, Hubbs, Hagar, Lamb, Lauck, Montague, Mahon, McCutchen, Parker, Paxton, Robinson, Ruffner, Sinsel, Stevenson of Wood, Stephenson of Clay, Stewart of Wirt, Sheets, Van Winkle, Walker, Wilson—30.

So the motion to lay on the table was lost.

MR. BATTELLE. I should like to have the resolution reported now, if you please.

The Secretary reported Mr. Caldwell's motion as follows:

"Resolved, That from and after this date the per diem of members of this Convention shall be three dollars."

THE SECRETARY. The amendment of the gentleman from Doddridge is to exclude from the operation of the resolution members whose homes are one hundred and fifty miles from Wheeling.

MR. BATTELLE. I move, as an amendment to the amendment, after the word "three dollars per day" to insert "and the mileage allowed to members of the legislature."

MR. STUART of Doddridge. I suppose the object of the resolution was to save money; was for the purpose of economy; saving money it would keep ourselves in the bounds of the sixteen thousand and so many dollars. The amendment to the amendment now offered will increase the expenses greater than if just left alone. The mileage for a great many of these gentlemen will be more than the additional dollar from this to the end of the session. If gentlemen will make the calculations, they will see it is so. I am willing to do justice to these men and am perfectly willing to vote them mileage but if your object is to economize and save money by the operation, you are making a mistake.

MR. SOPER. My own individual opinion is that we are not adding anything to the dignity and respect of our body by introducing resolutions of this description. A convention representing the State of Virginia called us into existence; they directed what we should receive as our allowance. We have not interfered with the per diem of the legislature in any respect whatever. Some gentleman remarked before dinner that inasmuch as we had been striving that the legislature should receive but $3 per day hereafter under our new State organization, conveying the idea that we were interfering with the per diem of the existing legislature. That is not so, sir. We are interfering with the per diem of nobody. Well, sir, the amendment that has been added to take and add mileage to the pay of the members present—there is no authority for that, sir. If we should go to the legislature with a proposition of that kind, they would say to us: the authority that gives you your per diem does not embrace this subject and therefore it cannot be done. I would as willingly as any gentleman on this floor give these gentlemen a mileage allowance provided we were authorized by law to do it. But when I see no

authority for doing it, I know the legislature would not undertake to do a thing they have no authority for. I have noticed a considerable deal of interest outside of this body as to what we were doing and how we were spending our time; and there are those petulant, meddlesome kind of people in every community and they appear to be about and around, probably within our body. Now, I submit that it does not become the character and dignity of a body like this to be talking on these subjects. I again say we had no hand in fixing our per diem allowance. True we cannot draw it from the legislature except the legislature gives us the power. The legislature will do justice in this matter, and if we only perform our duty here we shall complete a work of the kind that has never been accomplished in so short a period in the history of this nation. You may go to every state that has ever formed or amended a constitution and you will find that men have devoted more time than we shall if we get through in the allotted time. If we find it necessary to stay here longer, that legislature will provide for us. I am confident it will because I believe a large majority of them are honorable men who seek to perform their duty fearlessly. Suppose they do not, however, and we draw the money allotted to us, what can we do? Why, go on, like high-minded men, and perform our work, and if we are in a community that is so mean that they will not give us our per diem allowance which the August convention intended, why let them take it and keep it. We are here perplexed with these motions, spending more time discussing them probably than many gentlemen realize; and I cannot see the motive nor the object to be attained by it or the benefit to be derived. I hope therefore the motion will be voted down.

MR. HARRISON. I call for the previous question.

MR. BATTELLE. I think perhaps the suggestion of the gentleman from Doddridge will meet the case, equalizing this thing, and therefore withdraw my amendment.

THE PRESIDENT. The question is on the adoption of the resolution.

MR. HAYMOND. I will offer an amendment to the amendment of the gentleman from Doddridge:

"Resolved that after the 65 days are out, the Convention do agree to stay until the business of the Convention is through, for nothing."

MR. SOPER. While on this subject, sir, there are a number of gentlemen in this house who are here hardly one hour in two. Some of them days and days away; but whenever you adopt a resolution of that kind you will have a quorum to transact business. That is the opinion I have about it.

THE PRESIDENT. The gentleman from Harrison will perceive that the proposition on which his previous question was called has been withdrawn.

MR. HALL of Marion. I am free to say that if I knew what would make this session earliest to its close, doing properly its business, I would vote for that. I am at a loss to know whether if we reduce it to $3 and extend the time whether that will have a tendency to prolong the session or whether if we adopt the other course we would or would not be left without a full body; and we desire that all should participate in the deliberations of this body. So far as I am concerned, I care nothing about the thing in any form or manner. If we could ascertain and come to a conclusion what would be the effect of one or the other, I should know better how to vote.

MR. DERING. I, for one, sir, will agree to stay in this Convention without being hurried by any motions whatever; and, so far as I am concerned, will go for perfecting the work of this Constitution without any motions either outside or inside of this Convention. We were sent here to make a constitution, and I hold it is our duty to do it, whether we get any pay or not. I am for the original resolution. Let us have but three dollars a day. Let us all act consistently. We have been for reducing the wages of our state officers, and likely there are members in this Convention who will go on for this reduction. I trust we will act consistently and vote for the resolution of $3 per diem. If we have not got the money appropriated, I vote for staying here two months more without a single cent paid.

MR. PARKER. I am unable to see how it is that the Convention has anything to do with this question. I have been listening to the remarks of gentlemen. It is clear that the whole people of Virginia, in their convention last summer, representing the whole people of Virginia, ordained on the 20th of August that a Convention should be called and that delegates should be chosen. This was the whole people of Virginia, those only who had a right to ordain and prescribe these things. And they went further and

ordained that a certain per diem should be paid to delegates. That is the act of the whole people of Virginia assembled in sovereign capacity in convention; which overrides and overrules this Convention—overrules the legislature and all other state powers. They have ordained it and put it into the 7th section, I think, of the ordinance for dividing the state. Well, now, how do we stand? The delegates in pursuance and by virtue of that ordinance, were elected and sent here with power to act within the provisions of that ordinance. Our constituents said nothing, and had no right to say anything about our compensation. That belonged to the sovereign people of the whole of Virginia and they had spoken in their ordinance and prescribed it. Well, now, this is the stand. I have come here under the contract that that ordinance prescribed, $4 per day. Whether the State of Virginia is ever going to pay me or not is entirely another question. I am here on that contract in the performance of my duty, carrying out the work I was sent here to do. For each day I so spend, the State of Virginia owes me, and every other gentleman present, $4. Can this Convention qualify it? Can a majority get together here and take away from the minority? It is perfectly self-evident they cannot. Our contract is with the State of Virginia, over which this Convention has no control whatever. The legislature, which is subject to the Convention, made an appropriation of a sum sufficient for 65 days session. If we complete the work in 65 days, we are paid in full. If we do not, what then? The State of Virginia will keep its contract with us. I have no fear of it. I could work a year on her credit. Let us go on as true men, in earnest to do this great work which our constituents are now pushing at our backs. Let us not stop to play truant by the way. That is what our constituents want, not a little tinkering about whether we will knock off nine-pence or ten cents—a matter we have nothing whatever to do with. I am ready to go on. I will go on, and let them pay me what they are a mind to. When the 65 days are out, I will go on faithfully and do what is in my humble power to complete the work; and if the State of Virginia doesn't want to pay me I will give them a receipt in full. That is the way I feel. I am against the whole of it.

MR. HAYMOND. My object in offering the resolution which I offered was that I doubted very much whether this Convention had the power to change this contract. Men are here by contract for $4 a day, and I offered that amendment to try gentlemen. Now, if

they are in earnest let them stick up to the bargain. I am here to walk the chalk.

MR. SIMMONS. I am willing, for my part, to stay here as long as any other gentleman after the 65 days is out and work on my own credit. When I consented to come here, I told my constituents that it was not with any desire to make money; nor did I expect to make any, but merely to comply with their wishes I consented to come. But there is one thing that strikes my mind, and that is this: I do not see how we are ever to complete this work unless we apply ourselves to it. There has been a great deal of time lost unnecessarily, and we are now consuming time unnecessarily; and I am sorry to say within the last few days I have seen a principle working in this Convention that does not suit my mind at all; and I am sorry to think that there is an aristocratic principle at work in the last few days. There is a number of gentlemen who have been advocating high salaries, and now they have attained that object, and it seems to strike my mind that some of these gentlemen have obtained an object which seems to suit their minds precisely, and some of them perhaps expect to retain some of those offices; but it seems to me they have got the balance of power in their hands and they wish to hold it. I wish to ask the members of this Convention, while they have the balance of power in their hands to hold it and never let the iron shoe be put on them. If they will remind themselves a moment of the principle that worked in old Virginia, and has been working there for many years, and apply it to western Virginia, they will plainly see what it has brought them to: that they have paid their taxes for many years, and where have they ever received a dollar's worth of it? Never, and never would unless we cut ourselves loose from them. As that has been my object in coming here, to try to cut loose from old Virginia, in order to obtain our rights, I am sorry to think that a principle that worked there is beginning now to work here. I ask the members of this Convention that have the balance of power in their hands to keep it and never suffer those influences to come upon them.

MR. WALKER. I have listened to the arguments and I have thought there has been a good deal of time consumed unnecessarily in regard to the question now before us. I think it wholly unnecessary. There seems to be a disposition now that because the salaries sought for circuit judges was not carried, they will now seek to reduce the pay of the members of this Convention, which

I do not think is right at all. I do not think it is proper for the Convention to vote down the salaries and that it should remain as it is. A certain specific sum was allowed to every man who was elected a member of this Convention and it does not seem proper to change it without his consent. I do not think it is right to decrease the pay of members who come here at $4 a day.

MR. BRUMFIELD. I don't deny but what I want my pay (Laughter). I was at the convention in June on my own expense. I was here in August and had to travel about 600 miles to get here, and paid my own way. I want my $4 a day for 65 days; and if we sit longer, I want the legislature to make an appropriation to pay the balance.

MR. HAGAR. Circumstances always are said to alter cases. I am satisfied the Convention has no power to change this if they were a mind so to do. Also that if we cannot get through in 65 days, the legislature will appropriate enough to pay us on. But I am opposed to these long speeches. There has been hour after hour, almost unnecessary, spent here, and then men will talk about time wasted. Perhaps the convention that called us here understood we were worth the same the legislature received, and the probability is the legislature will not give us a cent of mileage. I don't care whether they do or not. I reckon we will keep the $4 a day until the Convention is done if Virginia is worth it and willing to pay; and if not we will do without it.

The vote was then taken on the resolution, as follows:

"Resolved, That on and after the 65 days are out, we the Convention will agree to stay until the business of the Convention is through, for nothing."

YEAS—Messrs. John Hall (President), Brown of Preston, Brown of Kanawha, Brooks, Chapman, Cook, Dering, Hall of Marion, Haymond, Harrison, Hagar, Lamb, McCutchen, Paxton, Stevenson of Wood, Stephenson of Clay, Walker, Wilson—18.

NAYS—Messrs. Brumfield, Battelle, Carskadon, Dolly, Hansley, Hubbs, Hoback, Irvine, Lauck, Parsons, Powell, Parker, Robinson, Sinsel, Simmons, Stewart of Wirt, Stuart of Doddridge, Sheets, Soper, Taylor, Van Winkle, Warder—22.

So Mr. Haymond's motion to amend was lost.

MR. STUART of Doddridge, in casting his vote said: I would

like to explain my vote. I do not want to be placed in a false position. I am willing to remain here after the 65 days, but I do not want to compel any man to do the same against his will; and for that reason I shall vote no.

MR. BATTELLE, when his name was called: I will do the same; that is just my case.

MR. SINSEL, when his name was called: I will do the same.

MR. POWELL, when his name was called: the same reason that caused others to vote no will cause me to vote no.

MR. STUART of Doddridge. I suppose the question now comes up on the amendment to the resolution offered by myself. I am perfectly willing to fix up the resolution so as to commit myself at least to the mover of the resolution. I am sorry this thing has been mooted here. It has taken up considerable time and I see no good likely to result from it. Like several gentlemen who have spoken on the question, I do not believe it is in the power of this Convention to change the compensation of the members who came in under the ordinance of the convention; but still I am perfectly willing as one of the members living within 150 miles of this place to say that I am willing to bestow one dollar a day in order that the session of the Convention may be extended. Now, sir, it comes very unfairly—very unfairly. Come up to this thing, now, gentlemen, with clean hands. Here are some members of this Convention who have traveled three hundred miles and they will pay for it out of their per diem—a good portion of it in supporting them while here, while other members who have not been expending one dollar yet are seeking to curtail these men. They will not release a dollar a day while other members will receive a greater amount. It is right and fair to pay mileage because that equalizes the rewards for the labor performed. If one has to travel 300 miles and pay $60 for it, he ought to have some compensation for it. Four dollars a day for many members is a pretty good compensation, while it does not pay other members of this body. I feel like doing justice; and if you want to come up and toe the mark let us wash our hands and do what is right and pay these gentlemen what they ought to have and curtail our own wages. If the gentleman was here, I would propose $2, but he is not here.

MR. SOPER. I want gentlemen to understand it. We are now, gentlemen, all entitled to $4 a day, and you gain nothing by voting

for this resolution. It is an unnecessary resolution entirely. No man can get any benefit from it. Because it is voting only what is given to you.

MR. STUART of Doddridge. If you don't vote for this amendment, very likely you will force the resolution upon you and you had better have the amendment than the resolution.

MR. SOPER. Very well; let the resolution come; and I will stay here for the 65 days and if the State of Virginia doesn't pay me I will say nothing about it.

MR. POWELL. I do not consider that this body has the power to take it out of the hands of those who wish to hold it, and I cannot look at it in that way. I am willing to remain here until the Constitution is made, and if I get anything for it I will be very thankful for it; but if I get nothing for it I shall consider that the State of Virginia owes me that sum whatever it may be. Of course it is optional with an individual whether he relinquishes his claim or not. Even if the majority say it shall be $3, I don't believe they have the power to vote it out of another man's hands. I agree it is optional with each individual whether he relinquishes or not.

MR. LAUCK. When I vote I wish to vote advisedly. I desire the clerk will read what the amendment is.

The Secretary read:

"Resolved: That from and after this day the per diem of the members of this Convention shall be three dollars."

Mr. Stuart of Doddridge moved to amend so as to include only those living within 150 miles of Wheeling.

MR. HAGAR. It would be found to my advantage and the advantage of some others to vote for the amendment. I expect to vote against it. It is unfair. I have ever since I have been here to go on the principle of justice. I shall vote against the amendment and then against the resolution, for I think this Convention has nothing to do with it.

MR. SIMMONS. This does not give you any mileage.

MR. HAYMOND. I discover that the mover of this resolution is not in the house. For some cause or other he has disappeared.

A MEMBER. Let us settle it.

MR. STEPHENSON of Clay. I cannot see any necessity for discussing this question, as it must be a settled fact that this sixteen thousand dollars we must have. What is the difference whether we have it now, or in 65 days, for we are determined to have it (Laughter). It does not matter how long we stay here, if we stay eighty days. I cannot see any good that can arise from the discussion of this subject.

MR. HAGAR. What is the question? I don't understand it.

THE PRESIDENT. The very thing you said you would not vote for.

The Secretary reported the amendment.

MR. STUART of Doddridge. If the amendment is voted, the members living within 150 miles of Wheeling will draw only their three dollars a day, and those living beyond this will draw their four dollars a day. I will vote for the amendment and then vote against the resolution as amended if it carries.

The vote was taken on the amendment and it was lost by 18 ayes to 19 noes.

The question recurring on Mr. Caldwell's resolution, Mr. Simmons called for the record of the vote. The vote was taken and resulted:

YEAS—Messrs. Brown of Preston, Brown of Kanawha, Brooks, Dering, Hall of Marion, Harrison, Hubbs, Lamb, Paxton, Stewart of Wirt, Van Winkle—11.

NAYS—Messrs. John Hall (President), Brumfield, Battelle, Chapman, Carskadon, Cook, Dolly, Hansley, Haymond, Hagar, Hoback, Irvine, Lauck, Montague, McCutchen, Parsons, Powell, Parker, Robinson, Sinsel, Simmons, Stevenson of Wood, Stephenson of Clay, Stuart of Doddridge, Sheets, Soper, Taylor, Walker, Warder, Wilson—30.

So the resolution was rejected.

MR. IRVINE. I make the motion that hereafter instead of meeting at half-past three o'clock, P. M., we meet at two o'clock.

MR. VAN WINKLE. I have two or three times on similar motions opposed them for one reason that I had no doubt there is a

gentleman here who is a member of the senate, and a very useful member there, whose time is fully occupied. He has but this hour and a half to attend the senate or must lose his place here. The legislature will perhaps adjourn in eight or ten days. I hoped this might be kept up until that time. I allude to the gentleman from Doddridge. He is chairman of two or three committees there and he is doing a great deal of work there and he has such positions here that his presence might be more desirable than members occupying the same position. I submit to members whether we cannot afford to hold on to the half-past three a few days until that gentleman is relieved from attendance on the senate. I do not think we gain much by the change.

MR. LAUCK. I move to lay the resolution on the table.

MR. IRVINE. I ask for the yeas and nays.

The vote on the motion to table was taken and the Convention refused by 16 to 24.

MR. STUART of Doddridge. I desire to offer an amendment. I am ready and willing and desirous to work. There is no man in the State more disposed to do it than I am. I move to amend the resolution by saying that we shall take a recess here at half past twelve and meet at half past three and to take a recess at six and meet again at seven, and I don't care if you extend the session to midnight. My labors at present are divided. All I ask is an hour and a half, if you will impose the labor on me when I can get the time. It seems to me the evening will be just as pleasant as the hour and a half after dinner. I am willing to meet at seven. My position in the senate is a very peculiar one. I know my motives would be appreciated. It may not be understood. I cannot perhaps give much light on it, but if my position was understood it would be I know satisfactorily appreciated by this body. I am astonished at my friend from Kanawha. He has had a great deal of courtesy extended towards him and I find I not only voted to extend that courtesy, but to pass by everything he was interested in in his absence in all cases. I have a deep interest in the proceedings of this body, and if we adopt the time of meeting proposed, I shall have to leave the senate entirely. My people are more concerned than I, and I cannot see any necessity at all for the change. I ask this as a favor for a few days at the hands of this body.

MR. BROWN of Kanawha. The gentleman from Doddridge has alluded to myself. I appreciate the position of the gentleman and feel very sensibly the importance of his presence in the senate. I do not know how he arrived at the supposition that I have not been as courteous to him as he has to me.

MR. STUART of Doddridge. I might have been mistaken. The gentleman voted against laying the resolution on the table.

MR. BROWN of Kanawha. Not at all. I want this question settled. I will vote for the three and half-past sessions.

MR. IRVINE. I am fully aware of the fact that the gentleman from Doddridge is a useful member of this house and likewise a very useful member in the senate; but we are very much pressed for time, and he is the only gentleman I believe that is incommoded at all by this new arrangement. I think while under the circumstances I was justified in making the motion, I shall not make any remarks in support of it. I just wish to test the sense of the house on the proposition.

MR. VAN WINKLE. I hope the gentleman from Doddridge, whom I have been trying to relieve is not going to put the burden on me by compelling us to hold night sessions. My Committee on Fundamental Provisions is still acting; the committee on boundary has got some matter to report; we are not through the report of the legislative committee, and we have recently recommitted a part of it. We may recommit a part of the judiciary report. That already I know. The time will soon come for the Committee on the Schedule to go to work. But if the house is to sit all day, when is this business to be done? I have never known any good in the world to come of night sessions. We are here three hours and a half in the morning and two and a half in the afternoon. That is as many hours a day in my opinion as we can devote to the transaction of business to any profit. My belief is that six hours a day is as long as we ought to be required to sit in the present stage of the business. When the committee get through, we may sit then for a few days morning, noon and night; and that may be more the way when the reports of the committee on revision begin to come in. Everything has got to be run over. Now, all these reports are to come up on their second reading. There is no one yet that is finally passed; but I am satisfied that at this stage of the game we are sitting hours enough. When the gen-

tleman from Doddridge is relieved, which will be in a few days, if the Convention are willing to extend to him the courtesy, we can then meet at half-past two, which will then make seven hours. I do not think long hours in open session is necessarily the best way to promote the transaction of business. We need to do less talking and more thinking. We need to work in committee to prepare the details of our work before we come into Convention to talk about it. Discussion in session is the least important part of our labors. Some of the members who are not heavily burdened with the committee work may feel that they are not earning their per diem and that if they are not continually in session nothing is being done. They are mistaken. Let our work be carefully matured before it is brought in, and then it can be dispatched all the more rapidly when the Convention takes it up in open sitting. I am satisfied business will progress more rapidly in this way than if you attempt to keep us sitting here all day long and night too.

The question was taken on the amendment of Mr. Stuart and it was rejected; and the question recurring on the adoption of Mr. Irvine's resolution, it also was rejected.

On motion of Mr. Parsons, the Convention adjourned.

* * * * *

XXXIX. MONDAY, JANUARY 27, 1862.

The Convention met at the appointed hour.

Prayer by Rev. R. L. Brooks, member from Upshur.

The journal of the previous day was read and approved.

Mr. Battelle, submitted the following proposition, which was ordered laid on the table and printed, and referred to the Committee on Fundamental and General Provisions:

"1. No slave shall be brought into this State for permanent residence, after the adoption of this Constitution.

"2. All children born of slave parents in this State, on and after the fourth day of July, eighteen hundred and sixty-five, shall be free. And the legislature may provide by general laws for the

apprenticeship of such children during their minority, and for their subsequent colonization."

Mr. Brown of Kanawha submitted the following as an additional section to the report of the Committee on the Judiciary. Laid on the table and ordered printed:

"The circuit courts shall, except in cases confided exclusively by this Constitution to some other tribunal, have original and general jurisdiction of all cases at law, where the amount in controversy, exclusive of costs, exceeds twenty dollars, and of all cases in equity, and of all crimes and misdemeanors, and of all controversies concerning the title or bounds of land, the probate of wills, the appointment or qualification of personal representatives, guardians, committees or curators, and concerning mills, mill dams, roads, ways and ferries, and in cases of habeas corpus, mandamus and prohibition, and cases involving freedom, or the constitutionality of a law, or the right of a corporation, or of a county, or of the supervisors thereof, to levy tolls or taxes.

"The circuit courts shall have appellate jurisdiction in all cases, civil and criminal, wherever judgment has been rendered by any inferior court or other tribunal, or by a justice of the peace, except that no appeal, writ of error, or supersedeas shall lie where the judgment is rendered by a justice of the peace, in assumpsit, debt, detinue or trover, and is for less than ten dollars.

"And the said circuit courts shall have jurisdiction of all such other matters as shall be prescribed by law."

THE PRESIDENT. The unfinished business would be the consideration of section 13 of the report of the Committee on the Judiciary.

The section was reported as follows:

"13. Judges may be removed from office, by a concurrent vote of both houses of the legislature; but a majority of all the members elected to each house, must concur in such vote; and the cause of removal shall be entered on the journal of each house. The judge against whom the legislature may be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the legislature shall act thereon."

MR. HARRISON. I propose to offer an amendment to the first sentence to insert after the word "legislature" in line 103 the words "for malfeasance, corruption, incompetency, neglect of duty, or on conviction of any infamous offence."

As the sentence now stands, it seems to me the legislature has too much power over the judges, who may be removed from office by concurrent vote of the two houses. It seems to me that exposes the judges to a removal for even frivolous causes, for mere matters of opinion—political opinion perhaps. By looking at the next line or two it will be found that a majority of the members elected to each house have it in their power to remove a judge, and it seems it would be much better to prescribe here the causes for which judges may be removed. You give the legislature judicial powers here, but give it to them without any limit whatever. It is with the view that the judges should be independent of the legislature as long as they pursue an upright course that I offer the amendment.

MR. SINSEL. I have no objection to the amendment, and if it should be adopted I hope the Convention will then vote down the entire section. It is unnecessary here; no use whatever for it.

MR. BRUMFIELD. Will the Clerk report the amendment.

The Secretary complied with the request.

MR. STUART of Doddridge. I cannot see why the gentleman from Taylor wants this section stricken out. It particularly describes for what offences the legislature may remove these officers, and it seems to me it embraces everything for which they should be removed unless you give the legislature power to remove for some political offence—for political opinions. "Malfeasance, corruption, incompetency, neglect of duty, conviction of any infamous crime"—pray tell me for what else you will have these officers removed for unless it is for some political sentiments?

MR. SINSEL. Mr. President, I will just tell the reason: I want the legislature to have nothing in the world to do with it. If we vote down this section, these judges will be amenable to the law and tried like other people exactly, and that is the very reason I am opposed to the section. I want the legislature to have nothing in the world to do with it.

THE PRESIDING OFFICER (Mr. Stevenson of Wood in the chair). The question is on the amendment of the gentleman from Harrison. Is the Convention ready for the question?

The vote was taken and the amendment agreed to.

The question recurring on the first sentence as amended, it was adopted.

Without further amendment, the section was adopted.

Section 14 was adopted without discussion, as follows:

"14. The officers of the Supreme Court of Appeals, shall be appointed by said court, or, by the judges thereof in vacation. Their duties, compensation, and tenure of office, shall be prescribed by law."

Section 15 was reported:

"15. The voters of each county, in which a circuit court is held, shall elect a clerk of said court, and an attorney for the State. The term of office of the clerk shall be eight years and that of the attorney for the State four years. The duties and compensation of these officers, and the mode of removing them from office, shall be prescribed by law; and when a vacancy shall occur in said offices, the judge of the court held in the county where it occurs, shall appoint a clerk, or attorney for the State, (as the case may be) pro tempore, who shall discharge the duties of the office until the vacancy is filled. In any case, or matter arising, in respect to which, either the said clerk, or attorney for the State, shall be so situated as to make it improper for him to act as such, the said court shall appoint a suitable person to act in his place."

MR. SOPER. We have provided, sir, for the election of a prosecuting attorney in the report of the Committee on County Organization, which I suppose will answer for the attorney of this court, and I think we had better—I move to—strike out, "clerk of said court" here with a view of having it inserted in the report of the Committee on County Organization.

MR. VAN WINKLE. It will be in the power of the committee on revision.

MR. SOPER. Then I move to strike out "attorney for the state," here; we have provided for one already.

The motion was agreed to, and the first sentence adopted as amended.

MR. SINSEL. In the second sentence I move to strike out "eight."

MR. SOPER. That was the motion I was about to make, sir, to strike out "eight" and insert "four", and then strike out "attorney for the State, four years."

THE PRESIDING OFFICER. Had it not better be by two distinct amendments?

MR. SOPER. Very well. Take the motion to strike out eight and insert four.

MR. HARRISON. I hope the Convention will not strike out "eight." These clerks are important officers; their duties are difficult to be learned. The habit among our people since the constitution of 1850 has been to elect a new man almost every term; and it is most frequently the case that they have elected men wholly incompetent to perform the duties of the office. No man can learn to discharge the duties of that office correctly short of four years, and it seems we ought to have some little efficiency in this government. Some of the clerks who know how to discharge their duties may be re-elected, it is true, and put in for one, two or three terms; but it seems there is no good reason why they should be required to be elected every four years, because the great probability is that by the time a man learns to discharge the duties he is turned out. The experience of every member I have no doubt is generally the same as my own in reference to this matter. It is true in some of the counties in the section of country I live in they have very good clerks; but the great majority of clerks know nothing in the world about their business. They are removed at the end of every term and a fresh hand comes in who knows nothing about the business.

MR. MAHON. I would like to ask whether it would be in order to offer an amendment to the amendment?

THE PRESIDING OFFICER. Yes, sir.

MR. MAHON. Well, then, sir, I would move to fill the blank with "six" years. That, if I understand what we have done, is the term the judges serve—six years; and I do not see why their term of office should be longer than the judge of the supreme court.

MR. SOPER. I believe four years will meet the views of the country better than to insert the amendment or leave it as it is. I know that much depends on having an efficient clerk, and with the limited knowledge I have of the performance of those duties in this state they generally have been performed by competent men. In the county where I reside the present clerk has held his office ever since the county was organized. I will tell you what I have discovered, sir. There is a great difference in the attention and

the readiness to accommodate when the office was held during good behavior under the appointment of circuit judge, and when it was altered and made an elective office. But I find a great difference in the attention and accommodation afforded by clerks a short time before the election and a very little time afterwards. There is no danger about getting an incompetent man, but if you want to have him attentive to his duty make his election for a short period. I fix the term at four years because it is sufficiently long, and it has this advantage in it, that if you make it six it will expire the same time as the judge's term expires; and if we should be so fortunate as to elect two incompetent men there might a difficulty arise. But if we have a competent clerk who has been in office two years, when we get a judge unaccustomed to the transaction of business he may afford him assistance particularly in relation to that portion of it which relates to keeping the month's report. I am opposed therefore to the amendment and hope it will not be voted.

MR. VAN WINKLE. I had contemplated, though had not decidedly made up my mind the propriety of making this clerk to be appointed by the judge. I prefer electing officers where there is any political power or influence to the office; but under the new arrangement I apprehend the clerk of the circuit court will be directly and entirely a ministerial office. He will not be like the former clerks of the county courts having charge of the county matters generally. I should perhaps have suggested it if I had known that it was the first clause of this section or was under discussion when I came in. I can only make the suggestion now. But as to his being elective, if he is to be I can see no reason why his term should be so much longer than the others. I should therefore be in favor of four years. I wish that we could carry it out entirely that these mere ministerial officers should hold office during good behavior; for I think since no political influence attached to an office, when a man gets into it and makes it a business or profession he ought to be retained in it while he behaves himself. I do not see that the principle of rotation in office applies at all to such officers. I may be mistaken in reference to the clerk of the court being entirely a ministerial officer, but if he is I should have preferred that. It is too late to make that amendment I suppose here; but I am for the shorter term.

MR. BROWN of Kanawha. The committee adopted eight years for the clerk; it will be perceived by reference to the report, the

term for which the judges are elected is eight years. It was supposed the judges and clerks being part of the same court, being elected at the same time should hold their offices during the same period. The Convention changed the time from eight to six; and the same reasons induced in the minds of the committee would reduce the term to six years to make them co-equal. The reason suggested by the gentleman from Tyler is different from that which occurred to the committee to some extent in selecting a different time, and I confess there is some weight in it—that a new judge comes in and an old clerk familiar with the business from his preceding experience might have some beneficial effect in conducting the business of the court which an experienced judge might lack. It is certain that this office of clerk is almost or mostly ministerial. The clerk if he is allowed to take acknowledgments of deeds has a judicial function to perform. Whether that is to be continued, I am not advised. The duties though of a clerk are mostly ministerial; although those that require much practice and experience to perfect a man in the discharge of, they are not so easily attained there. A great many people think that to write a good hand is the qualification for a clerk. But I have known very superior clerks who could scarcely write their name. It is the smallest of the qualifications. A business capacity is the great object in a clerk, and that is to be acquired by practice and experience. In regard to length of term, I do not think eight years is at all too long. The only reason that occurs to my mind for changing it is for making it co-equal with the judicial term. In my own county we have had a clerk—I do not know when he began but he is one of long experience and without any exception, I believe, is one of the best in the United States. Much of his success and skill is the result of business habits and experience. I am content, sir, whether the Convention adopt the one term or the other; but I think it ought to be six or eight years, not four; that this would be limiting the term too much and increasing the number of elections.

MR. HAGAR. I hope the amendment to the amendment will not be adopted. I like to always express my confidence in a man in some way or another, and I think that is the general wish of the people. If we get a good clerk who serves us four years and is an honest, faithful, upright man, does his duty and comes before the people, we will re-elect him. If the argument introduced in reference to the clerk from Kanawha county (Quarrier) is good,

why he will be elected again and then we will have an experienced clerk when the new judges come in. If we get a bad one, we had better get him out and try and get a better one in when most of the new judges come in. The people like to have a good deal to say in this matter, and I think they ought to have. The common laboring class of men have at least an equal proportion to pay in the salaries of these officers. If he is elected for four years and turns out to be a good clerk, faithful and does his duty, why the people will not be very apt to elect a new one inexperienced in his place and turn him out; and if he serves well for four years, like Mr. Quarrier of Charleston, they may elect him four years more. I have no disposition to say that a man should not have an office longer than four years and then be turned out forever; but let the people have some chance to express their wishes. I am in favor of the four-years term.

Mr. Mahon's motion to strike out eight and substitute six was rejected, and Mr. Soper's motion to strike out eight and substitute four was adopted.

The question recurring on the third sentence of section 15.

THE PRESIDING OFFICER. Does the gentleman from Tyler design offering the amendment indicated by him?

MR. SOPER. Probably it had better be left to the committee on revision.

MR. VAN WINKLE. The adoption of so much as relates to the attorney will be passed by and the question will be on so much of the sentence as relates to the clerk. It has been disposed of. It is fixed in the report of the Committee on County Organization. The term of all the county officers except sheriff is fixed at two years, the prosecuting attorney amongst them. If it is desired to amend that, it will be proper to do so when we get back on the second reading of that report; but if we take this as it stands there would be two contradictory actions on it.

MR. BROWN of Kanawha. I desire to inquire what is the time fixed in the report of the Committee on County Organization for clerk.

MR. VAN WINKLE. Nothing said about that, sir.

MR. BROWN of Kanawha. One is as much a county officer as the other.

MR. VAN WINKLE. It was supposed the clerk would probably be made appointive by the judge during good behavior. I would be willing to do that now if I thought that opinion prevailed among the members. If the officer is to be elected, then there is no other way to remove him and I want the elections to be tolerably frequent. But where an officer is devoid of political influence, I do not see the necessity for any change except at the pleasure of the court for incompetency or misconduct.

THE PRESIDING OFFICER. The proposition is then to come to a vote on so much of this sentence as relates to the election of clerk and pass by the other matter. The question then will be on the sentence as amended in reference to the election of clerk.

The sentence as amended was adopted, and the question recurred on the third sentence.

MR. BROWN of Kanawha. I would suggest the propriety of acting on that other clause, as the attorney is as much a part of the judicial department as the clerk. The commonwealth's attorneys are peculiarly in court their advisers and out of it they are now and then. You will have a vacancy and no way to fill it.

MR. SOPER. The latter clause provides for it.

MR. BROWN of Kanawha. Yes, sir; but the reference of the gentleman from Wood was that the attorney is a county officer; but I think it properly belongs here.

MR. VAN WINKLE. My point only is that it has been passed upon. It may be a matter for the committee on revision in which part of the Constitution it shall appear. But if it is desired to change, to lengthen the term, I, of course, would make no opposition, but it having been already fixed, to go on here and vote this *sub silentio* and leave it four years would, of course, throw the committee on revision into doubt. The only thing is to have it distinct.

The third sentence as read was adopted.

The last sentence and the section as amended were successively adopted and the Secretary reported the 16th section:

"16. At every election of a governor, an attorney general shall be elected by the voters of the State for the term of four years. He shall be commissioned by the governor, shall perform such duties, and receive such compensation as may

be prescribed by law, and be removable in the same manner prescribed for the removal of judges."

MR. SOPER. I move to strike out "four" and insert "two."

MR. DERING. It seems to me the attorney general ought to serve with the governor and for the same length of term. I do not see the propriety of making the attorney general's term two years and the governor's three or four.

MR. VAN WINKLE. The Committee on the Executive Department have reported the same provisions in reference to this officer; but while we fixed the term of the governor at four years, we did not fix that of the attorney general. I think these officers, constituting the governor's cabinet should hold their terms for the same length of time. It is only fair that the governor should have those around him as State officers who are likely to carry out the policy he directs. I have not a report to refer to see what the provision is there.

MR. HARRISON. Four years.

THE PRESIDING OFFICER. Four years for the governor and four for the other officers.

MR. VAN WINKLE. Would not it be as well if there is a provision for the attorney general, to pass it by here?

MR. DERING. I was going to suggest this amendment, that the term of the attorney general, be the same as that of the governor. Would not that meet the difficulty?

MR. SOPER. I will accept that because my object is to have them elected for the same term. I go in for the election of governor every two years.

MR. DERING. I will withdraw that.

MR. SOPER. I will accept that, Mr. Dering.

MR. VAN WINKLE. I will move to pass it by until we get to the executive report.

MR. HARRISON. I think there is no provision in the executive report for the attorney general.

MR. VAN WINKLE. I will renew then the motion of the gentleman from Monongalia, that the attorney shall be elected for a like term.

MR. STUART of Doddridge. It is not necessary to say anything at all about the length of term. As a matter of course, if you provide for electing them at the same time, the term will be the same.

MR. VAN WINKLE. Then the motion is to strike out all after the word "State" and insert "regular" before "election."

The amendment as prepared was reported by the Secretary as follows:

"At every regular election for governor, an attorney general shall be elected by the voters of the State."

MR. BROWN of Kanawha. The amendment proposed by the gentleman from Monongalia, while you elect them every four years, it does not indicate at all what their term of service is to be. It leaves out this feature which prescribes the term of the office to which a man is elected. It would not necessarily follow that his office was to expire at the next election and in the course of the succeeding fifteen or twenty years you would have a number of attorneys general in the State all claiming to hold the office. I want the old one to end when the four years expire.

MR. SOPER. I think we had better pass this by until we get to work on the executive.

MR. BROWN of Kanawha. I see no objection to passing by unless we discuss both these subjects at once, because it will have influence on the mind of every one in reference to voting. I must say I cannot agree with the gentleman from Tyler in regard to electing governors and attorneys general every two years. In the first place, I feel very confident that no man would be elected attorney general, would leave his practice and go to the capital and attend to the business of the attorney general for two years. He would break up his practice and he would not get enough to pay his board there hardly. I know there is some difficulty in that regard with the office of attorney general in our present State of Virginia. I know that many lawyers would not touch it with a 40-foot pole. It may therefore be a subject to be met with the two offices together, and we had better adopt them both here or both at the other place.

MR. VAN WINKLE. I would suggest that it is only necessary to fix the term time and have it understood here. The committee on revision will certainly have to condense a little and put all these

things under the head of "Elections" or "Election of State Officers," or something of that kind. Of course, one committee does not know what the other is doing. This is not the first instance where two committees have reported on the same thing, each taking jurisdiction of it on different grounds. Now, if the amendment I have proposed here will fix the term at four years; and if it should be fixed the same as the governor's, it will be all that is necessary at this time, as we understand with reference to the old constitution, the governor, although he may be elected in the spring, yet the legislature, both houses of the legislature, under the present constitution, are the judges of his election. The legislature elected at the same time will not meet until the following January. So that the term of the governor, as things stand at present—as far as we are advised, at any rate—will not be made to commence at the same time as county officers on account of that difficulty. Under a general provision for the terms of all these county officers and the members of the legislature ought to commence on the 4th of July; though there seem to be some obstacles in the Convention to fixing the elections later and, of course, making the terms commence later. If the elections should be fixed in the fall, all these terms might commence at the same time. But they never could make the terms of governor and legislature commence at the same time if the legislature is to be the judge of the returns of the election of governor. I do not see how it could be placed in any other hands. It would not be right perhaps to make the retiring governor the judge of the returns of the election of his successor unless he was made ineligible to re-election. But I apprehend the amendment as it stands, to say here at this stage of the business that the term shall commence at the same time as the governor's would be as well as we can do now. All these things have got to come up a second time before they go to the committee on revision. Then after revision, which relates only to verbal changes of style and arrangement, they come before the Convention for approval of such changes as the committee on revision may make. I apprehend, therefore, the amendment I have suggested will be about as far as we can go at this time; and whether it is expressed precisely in the words that is desirable is not I think of so much importance.

Mr. Van Winkle's motion to amend was agreed to, and the sentence as amended adopted; and the question recurred on the second sentence.

MR. BROWN of Kanawha. I move to strike out in the 132nd line the words "shall be commissioned by the governor." I see the propriety, very forcibly suggested by the gentleman from Wood, why since the governor's election must be determined by the legislature it would be out of place, in my opinion, to confide that to the retiring governor, and there is no other State officer in the State to judge of everybody else. County officers are judged by those in the county and that is determined there. They are certified by the officer appointed to determine who is elected in the county; but the governor, of course, has to come from all over the State, and the fact whether he is properly elected or not—the adjudication of his election—must be by the legislature. It is altogether proper then as these other State officers that are elected—and the attorney general will be a State officer—run upon the same ticket, elected by the same constituency—that the legislature when it judged one should judge the other and not leave that officer to be commissioned by the governor who is elected at the same time. I do not see if an officer is declared elected by the legislature any need of giving him a commission. It will then read: "He shall perform such duties, etc."

MR. VAN WINKLE. In the report of the Committee on County Organization, as adopted there is a provision which does not relate to these State officers that the legislature shall provide for commissioning such of these officers as may be deemed necessary. Of course, it is not supposed that every officer needs a commission. I don't know how that is, or whether any of them do—whether the certificate of election is not sufficient. But I should apprehend the governor cannot commission. It would not make the governor the judge of the returns of his election. I do not presume the gentleman meant the governor shall be the judge?

MR. BROWN of Kanawha. That was the idea—that this was to make the governor the judge.

MR. VAN WINKLE. But if all commissions run under the State seal, of course it would be an executive function for the legislature to pronounce the attorney general duly elected, why then the commission issues from the executive office, as a matter of course. If the board of county supervisors return the sheriff as properly elected, then the commission would issue as a matter of course. So that if it is necessary for a commission to issue at all he should be commissioned by the governor, and it would need, it seems, to attain the gentleman's object by some other provision.

MR. BROWN of Kanawha. Believing it could be attained in another form I will change the amendment.

MR. VAN WINKLE. I would call the gentleman's attention to what is here in the 8th section of the executive report, 9th section: "A secretary of the commonwealth, treasurer, and an auditor of public accounts shall be elected at the same time and for the same term as the governor." The attorney general is an officer of the State, he is the governor's law adviser, a member of his cabinet. The returns of his election should be made and judged in the same manner as these other State officers. It appears to me when we get to that section we could insert the attorney general there and it would be such a provision as is necessary, while this might be left. I think we ought at least to have a general provision about what officers are commissioned officers. I don't know whether it has been usual to commission the attorney general, or what officers it has been usual to commission.

THE PRESIDING OFFICER. Does the gentleman from Kanawha withdraw?

MR. BROWN of Kanawha. Yes, sir; I withdraw.

MR. VAN WINKLE. We pass this as it stands, then, and when we get to the executive report it can be conformed to the executive officers.

MR. BROWN of Kanawha. I see it will be necessary to make some harmonizing when they are all voted, to make them all harmonious.

There is an idea embraced in the latter part of this section that is not in the executive report—an officer that is to aid the financial department in prosecuting claims of the State; he also will advise the governor and the other officers relative to the rights of the State in any controversies liable to arise, and it is necessary that there shall always be supervision over him. We have provided that which has just been voted in relation to the judges —"to be removable, etc." which I deem a very essential feature; and I therefore think it most proper that the section to be voted has this in, in the harmonizing the executive department where officers of a similar character where there is any conflict.

MR. VAN WINKLE. The gentleman will remember that there is also a provision in the legislative report about impeachments.

MR. BROWN of Kanawha. This is different from impeachment, which refers only to judges. This provides not for impeachment, because that always implies a crime, and then the legislature may remove an officer without any crime by merely stating the reasons on the record. It may be the reason stated is that he is the best and most competent officer in the commonwealth, if he becomes obnoxious to them they may remove him.

MR. VAN WINKLE. I concur with the gentleman. I had forgotten the concurrent vote.

The 16th section was adopted, and the question recurred on the 17th.

"17. Judges, and all other officers whether elected or appointed, shall continue to discharge the duties of their respective offices after their terms of office have expired, until their successors are qualified."

MR. VAN WINKLE. I move to pass this by on this ground, that when the report of the Committee on General and Fundamental Provisions was up, it contained some provisions which gentlemen thought were not full enough, and at the time it was suggested that it go back to the committee for the purpose of introducing a general provision of this kind. I have prepared one which will be proposed to the committee at the meeting tonight and probably be reported by the committee tomorrow or next day. It embraces all the officers of the State and is very nearly in the same language, that all officers shall continue to execute their duties until their successors are elected and qualified. I will therefore move to pass it by here because this coming in connection with the judiciary might be supposed to refer to judicial officers only, while it is proper to have a general provision covering all the offices in the State. It will probably save time.

The motion was agreed to and section 18 (the last) was reported:

"18. Justices of the peace shall only have jurisdiction of actions of debt, detinue and trover, and then only where the amount sued for does not exceed fifty dollars, exclusive of interest and costs. They shall be conservators of the peace in their respective counties, have authority to take relinquishments of dower, acknowledgments of deeds and other writings, administer oaths and discharge all other duties appertaining to their office."

MR. VAN WINKLE. I move to pass by the 18th section. It has been all acted on. It has been provided for in the former report.

MR. BROWN of Kanawha. If the gentleman will allow me but a moment, I was going to make a motion to pass by the residue of the report except the question of arranging the circuits and that section on the question of jurisdiction. I will read the section I have drawn, but from consultation with other gentlemen I thought it best, and it was suggested as this was a matter which if it failed to meet the whole of the jurisdiction here it would be a difficult matter to remove afterwards, to postpone it for further consideration.

Mr. Brown then read his proposed additional section as follows:

"The circuit court shall, except in cases confided exclusively by this Constitution to some other tribunal, have original and general jurisdiction over all cases at law, where the amount in controversy, exclusive of costs, exceeds twenty dollars, and of all cases in equity, and of all crimes and misdemeanors, and of all controversies concerning the title or bounds of land, the probate of wills, the appointment or qualification of personal representatives, guardians, committees or curators; and concerning mills, mill-dams, roads, ways and ferries; and in cases of habeas corpus, mandamus, and prohibition; and cases involving freedom, or the constitutionality of a law, or the right of a corporation or of a county, or of the supervisors thereof, to levy tolls or taxes.

"The circuit courts shall have appellate jurisdiction in all cases, civil and criminal, wherever judgment has been rendered by any inferior court, or other tribunal, or by a justice of the peace, except that no appeal, writ of error or supersedeas shall lie where the judgment is rendered by a justice of the peace in assumpsit, debt, detinue or trover, and is for less than ten dollars.

"And the said circuit courts shall have jurisdiction of all such other matters as shall be prescribed by law."

That covers my opinion of the course that can be taken with any cases that arise; and still if there is any oversight it will be well to consider it before it is passed.

MR. VAN WINKLE. I think it had better lie on the table and be printed. We can have it here by tomorrow morning. Just from hearing it read, we might not take the idea. I would like to say in connection with that, I had notified the Convention once or twice, while on the subject of justices of the peace, of my intention to

offer a provision to fix that so a case could be tried by a jury before the justice of six men. Somehow in the hurry of other matters I have omitted to do so. I will offer the provision to the effect that the legislature may provide for having a jury to aid the magistrate—which I have not yet prepared—I will also move in that case, I think, especially, that the minimum of jurisdiction should be $50. I do not see that in cases that are not confided, except in cases not cognizable by the justice, the necessity of that class of cases, which are plain summary matters of fact that we need to confide to the justices of the peace, it is necessary to travel the circuit with them when the amount is below $50 except by way of appeal. It seems to me it would relieve the circuit of a good deal of small business, and that a sufficient tribunal is created for their trial. I mention this merely as an amendment that I shall probably offer. I notice gentlemen have fixed their minimum jurisdiction at $20, but so as to confine it to cases that are cognizable by justices of the peace to $50. I merely rise to give notice that this being the judiciary report and it coming in jurisdiction of the circuits, I will offer it here; and of course it will be, like everything else when the Constitution is re-arranged, put in its proper place. But I wish to have the sense of the Convention on the propriety of letting the legislature provide a jury before justices of the peace, and with a view that the jurisdiction of the minor class of misdemeanors may also, if the legislature deem wise, be submitted to the justices; leaving the whole subject to the legislature, simply giving them permission to do it. That in connection with the proposition which it is proposed to print.

The motion to pass by the 18th section was agreed to, and the second section, which had been passed by early in the discussion was taken up.

MR. BROWN of Kanawha. As we have necessarily to return this report again, I move to pass by the second section also. We then would get to another subject. I have not looked over this since it was first passed by, and would rather have a little time to look it over, what I thought then having passed out of my mind.

By general consent section 2 was not taken up.

MR. VAN WINKLE. I move to take up the report of the executive committee. I see, however, the chairman of that committee is absent.

MR. SINSEL. He is away a good deal of the time. Second the motion to take it up and go on with it.

MR. STUART of Doddridge. I hope it will not be taken up. Let us complete the legislative report. The chairman of the executive committee is not here.

MR. BROWN of Kanawha. The chairman of the legislative committee is not here.

MR. VAN WINKLE. All the chairmen are absent.

MR. STUART of Doddridge. Well, we have his report, and I think he would be satisfied to have it taken up.

MR. BATTELLE. I think I can relieve the Convention. The Committee on Education have a report in and the chairman is present, but did not come here this morning with the remotest expectation of acting upon it today; but if the Convention feel disposed to pitch in, sir, I am ready. I move to take up the report on education.

MR. VAN WINKLE. I withdraw my motion to take up the executive report.

The motion to take up the report of the Committee on Education was agreed to.

The 1st section was reported as follows:

"1. All money, being the proceeds of forfeited, waste and unappropriated lands; all grants, devises or bequests that may be made to this State for the purposes of education, or where the purposes of such grants, devises or bequests are not specified; the revenues accruing from any stock owned by this State in any bank or other corporation, or the proceeds of the sale of such stock; any sums due this State from any other state on account of educational purposes; the proceeds of the estates of all deceased persons that may have died without leaving will or heirs; the proceeds of any taxes that are now, or that may hereafter be levied on the property or revenues of any corporation; and all monies that may be paid as an equivalent for exemption from military duty, shall be set apart as a separate fund, to be called the school fund, and invested under such regulations as may be prescribed by law, in the interest bearing securities of the United States, or of this State; and the annual increase thereof shall be sacredly devoted and applied to the support of free schools throughout the State, and to no other purpose whatever. But any portion of said increase remaining unexpended at the close of a fiscal year, shall be added to, and remain a part of, the capital of the school fund."

MR. VAN WINKLE. There are a great many separate and independent propositions in this section. I think it would save time to take them up by clauses, from semi-colon to semi-colon, and I move they be taken up in that order. These we will determine step by step. They are all relative to the clause commencing in line 13.

The motion was agreed to.

MR. HAYMOND. I am in favor of taking the whole section. It pleases me very well.

MR. BATTELLE. As I said when I moved to take up this report, I did not come to the Convention with the remotest expectation of its being considered today. I suggest it now merely as a time-saving instrumentality. I have not made any special preparation in reference to its consideration. I do not know, indeed, that it needs any. I certainly am not disposed to weary the Convention with any protracted remarks. I hope that the report will speak for itself.

This report is fuller perhaps than the provisions in the constitutions of some states in which very thorough and expensive school systems prevail. It seemed to be necessary to make the provisions here rather more full than obtains in some of the states where this system is of long continuance and has come to be understood everywhere as a matter of usage and does not, where it has existed so long, require such exact constitutional provisions. We have designed here, as far as we could, the means on hand, which is the great trouble, the great obstacle to be overcome in this scheme. We have designed to make as liberal appropriations as practicable for the use of a thorough common-school system in the State. The committee were of the opinion that there is no one subject perhaps upon which our people all agree so entirely as it does in reference to this one of providing such a system for the whole people. And I may further remark that there is no appropriation of means, no setting apart of money by the proper authority that so exactly and entirely reaches the whole people as does this. In the towns and average country, in our remotest as well as our most thickly settled neighborhoods this is a question that affects vitally and fundamentally the interests of the whole people. From the very nature of things, there is nothing local or partial in it. It comes home to the necessities of all our people and I think meets the desire, and very general desire of the community.

I may remark further that the committee in limitations and grants, and in other respects, indeed, have borrowed as far as any precedent exists the present limitations, grants and usages as fixed in the present constitution and laws, departing therefrom only when it seemed necessary to the same full completion and organization of the system. In reference to the first provision, I do not know that I need say anything. We labor in this State under this disadvantage, that while other states have large appropriations of public lands and handsome revenues accruing, this State has yet nothing of the sort, and in the way of lands is dependent alone upon what may arise from the disposition of forfeited, waste and unappropriated lands that may hereafter and by the operation of the laws of the State be disposed of. I should hope that this provision will meet the unanimous concurrence of the Convention.

MR. VAN WINKLE. Mr. President, I think it is probably very appropriate that the proceeds of any forfeited, waste and unappropriated lands, if there are any such within the limits of the State, should go to this school fund; and I had the honor to submit a proposition on the manner of disposing of it which I am informed by the chairman of the committee will be subsequently reported here. I think we need a school fund. It will take some years to accumulate one. I can make no estimate of what the proceeds of these forfeited lands will be; but they will be constantly accruing it is true, and they do not seem in any way or shape to be appropriated for any other purpose. We act on the presumption, of course, that when the state is divided that what waste and unappropriated lands lie within the boundaries of the new State will become the territory of this State; that though there may be provisions in reference to it, or in reference to them, in the articles of separation, if ever drawn up, it may be a matter when we come to adjust the matter with Virginia what part of our debt and the assets will fall to us. But I apprehend we would be anxious to retain the control of these things on our own territory, and under any circumstances they will come to us to control. These forfeited lands consist in many respects not of recent forfeitures, but of lands that have perhaps for many years never paid one cent of taxes; that in the meanwhile have been entered, portions of them, and appropriated by individuals whose rights, of course, where they have paid the taxes and incurred no forfeitures would be saved. There may be a great deal of such lands in some counties,

and there may be very little. But whatever it is, it can go to no better place than the school fund. It will afford some considerable sum toward paying off the debt of the State; and as a school fund is a thing that must be accumulated gradually I think the obligation would do as well to put the avails of these lands there as any place else. There is something to some people harsh in the very form of forfeiture, but it ought to reconcile them to it that it is to be applied to such a very useful purpose as disseminating education throughout the new State. I therefore trust this clause will be adopted.

The question was taken on the first clause, and it was adopted, and the second clause read.

MR. BATTELLE. I do not know that this needs any explanation. It is designed to cover both private bequests or devises or donations from individuals for the purposes of education in this State: that is to say, where these donations are made to the State and also to cover the cases that may arise of public grants to the State for the same purposes or where the purpose is not specified.

The second clause was adopted and the third reported.

MR. VAN WINKLE. I must move to strike that out. While, sir, as heartily desirous as any member can be that the school fund be rapidly accumulated that we might at the earliest possible period have the benefit of education disseminated throughout our boundaries, yet there are circumstances of clear and sheer justice in those who will be the creditors of the State that demand that this be stricken out.

MR. BATTELLE. I ask if any gentleman in the house has a copy of the constitutions of all the states. I omitted to bring mine and have to borrow one for a minute.

MR. VAN WINKLE. It will be remembered that the debt of this state—I am speaking now of the State of Virginia—a fair share of the debt was contracted for the purpose of taking in these banks in the various internal improvement companies in which the state is interested. Now, it may be remembered—I do not know whether it is by special act—that certain of these stocks whether in banks or improvement companies are pledged. They are morally so if not so by the very words of the statutes, for the redemption of the debt. Again if we take what debt of the state we will have in proportion to our population, we will have about eight millions

of dollars to shoulder. We may get a similar proportion—I estimate about one-fifth, that is about our proportion—of the population of the state. If we may get a similar proportion of the assets, which would, of course, reduce the debt when they could be converted; but those assets will be, for the most part unavailable, and we will therefore have to commence operations under an interest of some $480,000 a year; or, if some of these debts are seven per cent, it will exceed a half million. This would be a dollar and a quarter on the head of every white man, woman and child within the boundaries of the new State. But I consider the argument I have already used as sufficient to settle this question. I consider that morally, if not legally, these stocks are pledged for the redemption of the debt, and the dividends from those stocks are as sacredly appropriated to the payment of the interest. It is well known, sir, that the stocks would be worth as much as the debt, as the banks perhaps maintain their stocks. Those banks here in the northwest at least so far do; but it is a very complicated question. The State is a stockholder in eastern banks and these banks. Well, when we are about to settle with Virginia, the question will come up whether the amount of stock here is equal to one-fifth of the whole bank stock of the state. Now, my apprehension is—and I speak of it with a due regard to the responsibilities that such a declaration involves—that every bank east of the mountains is broken. I do not care what the circumstances may be in which this war shall terminate, but that is my conviction. I believe their cash funds have been drawn from them and that the scrip of the confederate states, so-called, is substituted for it; and that this will be worthless in any event, I can have no doubt. If the conflict should end in a temporary agreement to divide, the dividing line between the so-called confederate states and the loyal states, that line would run where we fix our boundary between the new and the old state. It will be an object, of course, for this State to retain the stock of the banks, within our own limits, and she may have to take it at par, as she probably will, when there will be no equivalent there, whether she will not or will have to sustain the loss that these banks have sustained. In my own opinion, sir, there is also a question which time only can determine: on what terms this division of property can be made. The old state is, of course, already in the clouds. Now they have been legislating about this bank, the Weston, which is a branch of an eastern bank, endeavoring to make something there to save it. But the difficulty there is this: that the bank is a

stock bank and it has only a portion of the capital. The residue of your stock is pledged here at Weston, and the stockholders residing in the neighborhood are considered as owning stock in the Exchange Bank of Virginia and not in that particular branch. If the bank goes, that must go with it. We would then have only the northwestern bank and franchises and the merchants' and mechanics' branch and branches within this State. Now, whether we should have to retain the complete jurisdiction of them and the ownership of them among our own citizens; whether we should not have to make an allowance, because the interest in these banks is pretty large. This is a question, therefore. It is not certain that there is a dollar to come from it; but if there is, as I have already said, I consider that this bank stock is sacredly pledged to the public creditor. And more than that: to preserve the credit of our State we must retain these stocks applicable to the discharge of the public debt.

Now how is it with internal improvements? There is not one foot of railroad within our boundaries that belongs to the State of Virginia. The state has not one dollar of interest in the Baltimore & Ohio or Northwestern Virginia Railroad—not one dollar. They have refused even to aid Wheeling which had taken half a million stock of the Baltimore & Ohio, which was paying dividends at the rate of six per cent per annum and had made an extra dividend of 33 per cent, and had the promise of paying more than six per cent. It was in fact paying more, because it was rapidly augmenting its sinking fund. But so strong was the dislike to do anything that might benefit this section of the state that when Wheeling applied to the legislature to take that dividend-paying stock off their hands with a view to reducing the capital of their debt and thereby enabling them to raise their credit and diminish their taxes, in order that their place might have a chance to grow and progress, it was refused. Not only have they not voluntarily done anything in our part of the state; but in the course of this when a city comes before them asking for such aid, under pressure of such a necessity as would have existed if it had suffered from a conflagration, they could not have refused without "Shame!" being cried on them from all the world. But when a dividend-paying stock is offered them, simply to relieve this section of the state, they refuse it. But these internal improvement stocks are all over the other side of the mountains. Some of them were indeed, paying dividends; but I believe I can assure this Convention that these dividends were nominal. I know a little about railroads. I know

that a railroad is not finished when it is done—that is, put in operation; and I know the reason why these railroads have been lingering and lingering along is just that reason, they never were finished. The Baltimore & Ohio Railroad is hardly finished to this day. They make no construction account. They pay for present construction out of their annual earnings; but if they did, it would be accumulating every year. There are many things yet to be done on that road which is operating with as much certainty and capable of doing as large a business as any other in the whole country. Yet I pronounce that railroad unfinished. I do not think, therefore, that these internal improvements, even if we could come in for our share of them, are likely to afford us anything for many years, and the dividends will be very light. They may go on declaring dividends, but I tell you the thing cannot last. Some of these railroads in southwestern Virginia have but one cross-tie, where the northwestern has four or five. These roads here are well constructed; but there they are just precisely in that condition, and if you will turn to the report of the Board of Public Works, where is shown the number of cross-ties to the mile you will see I have not exaggerated. I am certain there are few or none of these roads that have more than one cross-tie where the northwestern road has three. Now, then, sir, these roads—this property—will all lie on the other side of the mountains; and if they do allow us a share in it—and that is all they can do—they will not pay out money for the purpose, and we have got to look to selling the stock in these roads with a view to applying it to the debt of the new State. It will be many years before there will be anything derived from them that is worth while. These subjects will have to be thought of. Perhaps they may come up when the report of the committee on taxation is considered, and more information than I am able to give may be thrown before the Convention. But you will see that is one thing to be provided for —that debt. It is coming on us do what we will. Whether I state the amount correctly is not of so much importance; but take half the amount, and who would ever relieve us of the stocks and public works to which we might be entitled, and the portion of the literary fund—if that had not all been wasted. But with all these things, we shall have no immediately available means for the payment of that interest, and we shall have to go—it is very possible—immediately into taxation to meet the interest, for beyond the dividends on the bank stock we shall have nothing towards it. Now if it shall ever come to these banks and railroads proving profitable

—if the debt by these or other means is discharged—and there should be a surplus left, I should be perfectly willing that that should be turned over to the school fund. But in the present circumstances, however, desirable to increase that fund, whether if we do it at the expense of the State, we can justify it to ourselves hereafter, is a question. These things need a great deal of consideration and a better knowledge of the facts than I am able to impart at this time. But I think what I have said is reliable and it must enter into this consideration. I am willing to give to the school fund everything that can be justly or properly given it; but this taking it away from where it belongs to bestow it as it were a gratuity, is a thing I cannot consent to.

MR. BROWN of Preston. I feel very much like the gentleman from Wood in reference to the rapid accumulation of a fund for educational purposes in the State. And yet, sir, in view of the facts that he has stated, that these bank stocks belonging to the State have in many instances been pledged for the redemption or payment of the state debt, I think it is highly improper that we should direct them in the way indicated in the report. I do not know the precise amount of bank stock held by the State, but I understand it will probably exceed half million dollars, and that is held by the two banks in this city. Whether in view of this fact that these stocks are pledged or the redemption of the State debt the committee on finance, of which I have the honor to be a member, have given that direction to these stocks, the gentlemen if they will refer to the 8th section of the report of that committee, they will find that they have given that direction. "The legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt." I think any other course in the diverting of this pledge for the redemption of the state debt would be flagrant injustice to the creditors of the State of Virginia; and therefore I am in favor of the motion of the gentleman from Wood to strike out those words.

MR. BATTELLE. Mr. President, I will say frankly that there are gentlemen on the floor here—among them the gentlemen who have spoken—who are much better informed in relation to this question of stocks than I am. I will say, further, that there is no one here who is more anxious, and determined, indeed, that this State, so far as my vote goes, shall meet to the full extent its just and reasonable responsibility in the way of debt; and the point

made by the gentlemen that these stocks, if it be so—and I do not presume for a moment to question it—have been set apart heretofore or pledged for that purpose, is certainly one deserving of very grave consideration. I may remark, however, that the committee copied this provision almost verbatim from one found in the Constitution of Kentucky, in which they specified that some seventy-odd thousand dollars of stock owned by the state in a certain bank (I think the Bank of Kentucky) should be set apart for school purposes; and a similar provision, though not so precise, is found in many other constitutions of the country. I would ask the Convention, however, without giving up this point yet, to pass it by for the present. I would like to have more time to consider it. The argument of the gentleman from Wood was a little singular, that these stocks were not worth anything in the first place; that they are to be set apart to pay debts. That seemed to be the ground of his objections. I may have misunderstood him. But if it is to be in discussion or doubt—there is some doubt in my own mind in reference to it—I would ask the Convention to pass it by for the present.

MR. BROWN of Kanawha. I cannot coincide with the gentleman from Ohio on the motion to pass by this subject. I do not know that we will have any better time to study it than now, and we are compelled to meet this issue. I have no doubt it will be the pleasure, however reluctant it may be, of this State to assume a fair, just and reasonable proportion of the state debt. That I cannot question. If I could, I am very certain of another thing, that if we refused we would have no state to assume anything. I think there can be no question about the fact that whenever we shall turn our backs on the debt we justly and honestly owe, we will receive no favor in any legislative body in the land, whether state or national. Why, sir, Virginians would cut a pretty figure in the halls of Congress asking for the formation of the new State and its recognition by Congress when they were refusing to assume their just proportion of the debt of the state, and the creditors of that state being their representatives in that Congress and all representatives of the creditors in these northern states. Why, sir, in New York alone I doubt not $15,000,000 of the debt of Virginia is held; and would a Virginia representative ask a representative of New York to acknowledge this new State proposing a negation of the debts we honestly owe? If not, gentlemen seeking a new State and at the same time seeking escape from the pay-

ment of his honest debts, would have to return whence they came. So we may lay it down as a fixed fact that in the formation of this new State we have got to do justly as well as act wisely; be honest, be just to all men. While I do think that, sir, I cannot agree with the gentleman from Preston that these bank stocks are any peculiar fund to pay that indebtedness.

MR. VAN WINKLE. When this State has applied for a loan—I think I am rightly informed—perhaps the gentleman from Doddridge may be able to confirm it or otherwise—but whenever they have applied for a loan or for the selling of bonds, this fact of their ownership of bank stock and internal improvement stocks has always been put forward in the proposal; and in every estimate of the state finances, these are always put to the credit of the debt. The debt is reported at so much, and these stocks, so far as they are interest-bearing or dividend-paying are deducted from it, so that we seldom know really what the amount of the debt is. In the same way I conceive the literary fund is invested in these internal improvement bonds and interest is paid; and these stocks of the internal improvement companies are in fact pledged as a security for the capital of the literary fund.

MR. BROWN of Kanawha. I do not understand the State of Virginia has pledged anything she has got except her honor for the payment of her debts except in the case of the James River and Greenbrier Company, of which she is the main owner as mortgagee; that she has by mortgages on the works pledged the works for the payment of the bonds that she has guaranteed the payment of. That is rather a pledge of property to the creditor of which she is guarantor, and therefore it is indemnity to her and it is not her pledge.

MR. VAN WINKLE. I said morally if not legally pledged.

MR. BATTELLE. I find I misunderstood the gentleman from Wood. I understood him to say these things had been specifically and specially pledged by Virginia to the payment of her debts.

MR. VAN WINKLE. Morally, if not legally.

MR. BROWN of Kanawha. I am satisfied it is incorrect, and the gentleman will admit as above, is wider than the precise facts will warrant. I understand that Virginia has dealt upon her honor; has pledged nothing but that. When she goes into the market to borrow money she offers her state bonds. Those are authorized

by law and backed by her integrity. The buyer presents the state debt, and there is charged everything she owes, and then on the other side they set out their assets, banking stock, etc., and deduct that from the debt; and it shows the balance she has got to raise by taxation to provide for the indebtedness. But the great ground of credit is the taxation of the people, and the great ground of security is the honor of the state, that she will not repudiate her obligations for that which she has borrowed. Because whenever she will repudiate, she will have used the stocks. Whenever people refuse to pay by taxing people for the debts they owe, they will take away the stocks appropriated to it. No, the great point with the creditor always is, what is your ability to pay? If I say, our people are wealthy and will bear the taxation, they will lend to your government as long as you ask. If you have myriads of bank stocks and they doubt your integrity, they will not lend to you. Nothing but the honor of the state, because there is no power in the nation to sue the state. Whoever deals with a state has no power to compel it. It is mere volition; and whenever they say they will not pay, that is the end of it: except to wage war and collect by force. Now, this debt we owe, and our part we are bound to assume. And here I may notice, in reply to the gentleman from Wood, that in laying off our territory we have cautiously guarded ourselves against taking in any portion of these public improvements that we are going to assume the debt that is engendered for the making. Now, it was a singular sort of argument to my mind, the argument of the gentleman from Cabell, who favored excluding Allegheny which actually lies right in the line of our boundary and people identified with us in everything and in which some five or six millions of state treasure had been spent in internal improvements. It was to be excluded, and was excluded because the state had put that money there and if we received Allegheny we were bound to foot the bill of five or six millions of dollars. We have to foot the bill anyhow.

MR. PARKER. The ordinance provides—

MR. BROWN of Kanawha. I don't care anything about the ordinance. That can never justify us in dishonesty.

MR. PARKER. I speak in reference to the provision of the ordinance of last summer.

MR. BROWN of Kanawha. But I speak in reference to existing realities, the ordinance apart. The ordinance undertakes to pre-

scribe what amount of indebtedness this State is to assume; that it is to balance accounts and charge the west with all that we have received and credit us with all that we have paid. Well, that is a very fair accounting as between us and the east, and if there was nobody else in the matter there would be no difficulty in settling the thing—particularly when it is all in our hands. But the creditors of the state, rather a large number of them are out of it, and even those who are living in the state, will never give their assent to it; and I imagine, no matter where the creditor lives, we can never juggle between the west and east so as to cheat the creditors.

Now by the hypothesis employed in forming this new State the east will be broken as fine as powder. Then the creditor—take a New York creditor—whose delegate in Congress, comes up to vote on this question and asks his constituent at home, how about this thing? This creditor will say: the fifteen million of old Virginia state bonds the Richmond convention has passed an ordinance that there shall not be one dollar of interest paid to any Union men or their representatives; and if you vote to admit the new State, which is the only part of it that would assume any of this debt, then you take out the only portion that is able to pay anything and turn me over to the eastern part which will be broken and repudiate the debt too. Do you suppose New York delegates will ever vote for the admission of your State on such grounds as that? You are compelled to meet the world. While under the necessity of assuming a just proportion of this debt, no matter how much the amount, I am satisfied it is wise, and will be found out hereafter to be, to take in as much of the territory as you can as will include these improvements that will prove your indemnification for that debt which we will have to pay if it takes the last button on Gabe's coat and the shirt off of our back.

The State of Virginia has a number of bank stocks, and they have always been paying stocks. I am not aware of a solitary bank in the state in which the state held an interest that has never paid a dividend to the state. I concur in the sentiment that it is proper to transfer this stock to the school fund—the proceeds of it. I believe when managed for the benefit of that fund it relieves the people to that extent from taxation for the school fund. Everybody will have an immediate and direct interest in seeing that these stocks are properly and economically and profitably managed. The debt of the state ought to be met by direct taxation to meet this interest and a certain per cent, either one per cent or half, or whatever would serve to discharge the debt as a sinking fund,

I cannot question. That ought to be met fairly by a direct tax on the people, and meet it annually. Of these bank stocks, all the stocks owned by the state are not pledged at all—only obligated in the honor of the state that if she applies any of these stocks to any other purpose than with the paying of the public debt, you have the honor of the state to substitute in its place an indemnity by direct taxation. I do not believe, sir, that the people, unless I am greatly deceived will ever flinch when you tax them no more than necessary to raise the fund and discharge the public debt. They may be forced to augment that debt, but they will not repudiate. If they do, then I shall repudiate them.

I do not see any objection to this application of these stocks. I do not look in this operation to the stocks the new State will assume by this operation. I imagine whenever you form this new State we have got to have an entire reorganization of our banking system, placed on such a footing as that the money that is issued from those banks will circulate at par all over the state. The state will necessarily be compelled in sustaining and preserving a judicious banking system to be a stock-holder in that system; otherwise, if you committed this entirely to private capital your increase will affect values and you will have every kind of currency in every particular locality. The only way you can have a permanent, established and safe banking system will be to retain in the state, as a large stockholder, a considerable control, and that the proceeds shall go to this school fund. I hope therefore that the section will be voted as provided, and that it will be a permanent and prosperous fund.

MR. STEVENSON of Wood. I would prefer myself if this paragraph or clause was not considered final at this time. As it stands now, I confess I have a little difficulty in my mind in determining exactly what would be the proper course to pursue; but upon hearing the matter discussed so far I am rather inclined to think that the provision ought to stand as it is or probably with some modification, and for these reasons. It has been, I believe, admitted—at least it has been asserted with certainty that these particular stocks in banks and corporations are specially pledged for the redemption of the state debt or any part of it—that it is a mere moral obligation. Well, now, I will admit that. If there is no special pledge given by these stocks that they shall, be used for the purposes of redeeming state debt, there is a moral obligation, of course, resting upon the state with not only these stocks but all

the other property of the state has, if she has any, and all the property of every citizen of this state as a levy until the time comes when that debt is wiped out will be morally bound for the payment of our portion of that state debt. Now, why should the argument apply to these stocks particularly? Is not all the money we propose to collect and appropriate from any other sources as strongly bound in the moral point of view for the redemption of the state debt?

MR. VAN WINKLE. Better strike them all out.

MR. STEVENSON of Wood. Now, I say so. That is my argument. That is simply a moral obligation; then you cannot raise any revenue for school purposes on that principle. You cannot tax a man's property because that property is already morally pledged that this debt shall be redeemed. I do not consider the argument a sound one because it proves too much. If it were true that this bank and corporation stock is specially bound, why then there would be more force in the argument. Even then, I do not think it would be conclusive, because I say whether the property of the people of this new State is pledged by any special contract or consideration for the redemption of the state debt, it is just as much bound and every man is as much bound to see the debt paid as if he had entered into a personal contract for that purpose, if we assume any part of the state debt, which of course we will. I think that disposes of that portion of the argument. It seems to me it does.

Now, there is another consideration. The provisions of this Constitution which we are making is not to apply to special cases. They are to apply to the condition of the people of this State, to this system of education as it shall exist in this State until the time comes when the people will require this Constitution to be altered. Now it might be true that the argument would apply to this particular case, to the stock now held by the state; that it should be held for the purpose of liquidating the state debt. But suppose hereafter, when we have this new State, the State shall become a stockholder in railroads, bridges, banks and other corporations—I do not think she will do it with my vote; not if I can help it—but I do not know what course the Convention will pursue on that matter; and if they give the State the liberty of hereafter taking stock in these corporations, why, sir, this principle will then apply to that stock, and very properly I think. Because I cannot conceive any purpose for which the revenues aris-

ing from such public improvements in which the State shall have stock to which it could be so properly applied as in educating the children of the State. Now, that is a strong argument, it seems to me. Even if it were true that the stocks held now by the state appropriated to the liquidation of this state debt, it does seem to me after that stock has been appropriated for that purpose that if the state should hereafter see proper to invest her means or lend her credit to the purposes of other public improvements or corporations, that that money properly belongs to the school fund and should be appropriated for that purpose and no other purpose.

These are considerations that strike my mind as very forcible ones in favor of the retention of the provision as made. But it might be possible it can be modified so as to meet the views of gentlemen on both sides of this question. That the stocks at the present time owned by the state should be set apart and go as far as they will towards wiping out this state debt, but that the stocks hereafter owned by the State in any of these institutions or public improvements shall be dedicated for the purposes of public education. If the vote is pressed now, I shall have to vote for retaining the clause as it is; but I would prefer it should be passed by for the present.

MR. BROWN of Kanawha. There is another view that struck me after taking my seat. The suggestion of the gentleman from Wood who has just taken his seat, would be, as I think he will perceive in a moment, entirely futile. The stocks at present owned by the state are nothing, and therefore the transfer of any such to the school fund would be useless. These stocks belong to the State of Virginia. How can we deal with them and dispose of them? We are making a Constitution for the State of West Virginia, and we are not invested with the powers of the State of Virginia as the August convention was. West Virginia as yet has no stocks; in fact, West Virginia does not yet exist. It is stocks that the State of West Virginia may have that we are talking about, not what they have got for they have got none. The suggestions I made before were entirely in reference to bank stocks. I did not observe at that moment that this clause included stock in other corporations. In reference to bank stocks I think there is a high propriety in appropriating the proceeds of them to the educational fund. They have nothing to do with internal improvements. They are the commercial transactions of the community; and I can see very much propriety in appropriating the proceeds of the state's

stock in them to the school fund. But in regard to corporations for internal improvements, there is manifest injustice. In the first place—and before I sit down I will move to amend the motion of the gentleman from Wood so as to strike out only the words "or other corporations." Now suppose the state charters a company to construct a railroad through the length and breadth of the state; from some point in one end of the state to some at the other end, to supply a link between the commerce of states on one side with those on the other; by which railroad the state becomes the line of transit between the commerce of several states and foreign nations; the proceeds of which when made may run into the millions. I have no doubt there are channels which may be constructed through the state the proceeds of which would make the corporation have a profit of four, or five, or six millions a year—some five or ten millions—equal to the whole revenues of your state. Now that is made by a corporation. Because if the state sees the individuals cannot do it, it will see the necessity to aid in the public work and accomplish the great end. If that indebtedness has been incurred by the state for the benefit of the public and is then actually thereafter returning immense sums to the treasury that will be over and above any fund required for the school fund, and would it not be right and just that that money should go to the liquidation of the debt incurred. It seems to me not only just and wise, and proper that all the proceeds of internal improvement companies should go to the public debt that has been engendered by the state in order to make these internal improvements. I therefore hope that clause in the section will be stricken out, because it at once results in the inevitable defeat of the whole section; for I am certain the people of the State would tear this Constitution into ribbons if we adopt a provision that all the proceeds from internal improvements shall be turned over to the educational fund for it may prevent a sum five or ten times as great accruing to the revenues of the State. Take for instance, the revenues arising from the Erie Canal that goes to the treasury of the State of New York: who would think of appropriating the whole of the revenues of that work to their school fund? Or to turn over such revenues to the educational purposes of a state as small as this. Why, it would be to not only give a classical education to every child in the State but to keep some of them eight or ten years in the universities of Europe.

MR. BATTELLE. I wish to withdraw my request for postponing this, as the request was made under a misapprehension. I misunderstood the gentleman from Wood, as I before indicated, as stating that this fund had been specifically pledged for the purpose he indicated. I feel the force of the arguments made by the gentlemen who have spoken since in establishing this point, that this fund is no more pledged—I now mean specifically; the bank stock —to meet the debt of the state than any other property the state owns; and, indeed, as Mr. Stevenson showed, if we permit that to obtain, I do not see how the State can turn a wheel to any purpose or devote a cent of taxation to any object whatever; would have to wait for everything until we go to work and tax the people to pay the debt. At the same time, I wish it understood that I am for recognizing and providing to the full extent for our just proportion of the debt, whatever it may be—whether something or nothing.

In reference, however, to the pending amendment, I feel, I say, the force of the objections made by the gentleman from Kanawha to that phrase which he has moved to strike out. It seems not likely to me that the State of West Virginia will become a large stockholder in any work of internal improvement. There is, I believe, a provision in the report of the committee on taxation, which I judge from the indications, will meet with favor, that the state shall contract no debt for that purpose anywhere. It strikes me that the tendency here, that the State of West Virginia will not on any terms become a large stockholder in any work of internal improvement. So there is no danger, it seems—hardly a possibility, that the State of West Virginia will ever hold a fund of that kind yielding large revenues. But whatever the fund may be, from the nature of the case, the high probabilities are, and the almost certainty, that that fund will be limited. It seems to me precisely the same principle obtains in reference to it as in reference to any other property of the State; and it being a matter of public concern for same reasonings would apply for its being put into this fund whereby it would better be husbanded and its benefits more widely diffused. The same principles apply as in reference to the case of the stock held by the State in any bank. I really can see no ground for the apprehension that there is to be any great plethora of the school fund, any uncomfortable fullness from suffering this clause in the report to remain.

MR. VAN WINKLE. I am afraid we are at least going to take a leap in the dark. I have never had my attention very closely

drawn to the finances of the state. I have never had anything to do with it in a public way; and it is only as a citizen, informed the same as others, of what was going on in the state in which he is concerned, that I know anything about it. Incidentally noting the laws that are passed and what is done. I remember one little incident when I was written to by a monied man in New York, while I was residing in Baltimore, the time that Virginia had begun to sell her bonds in the New York market and was, under the policy of Governor Floyd endeavoring to establish a credit. I think she did not trust wholly to her "honor" about that. The New York gentleman was not an acquaintance of mine but my name had been given to him by some friend at Baltimore as one who could give the information he sought. I had nothing specific, but I wrote to the auditor to send me one of his statements of the resources of Virginia; and I am very certain that those bank stocks were put down as an offset to the debt Virginia owed. Now, sir, people do not claim their money on "honor"—capitalists, at any rate. They lend it on the credit of the person proposing to be their debtor, in which honor may be an ingredient but is a very indefinite term outside of the duelling law, and is not a thing that enters very largely into the calculations of merchants and capitalists. They take it for granted that any southern community will pay their debts if they are able, although some instances exist in the history of one or two states of this Union which would seem to contradict that supposition. But they look solely to the resources. Properly that means whatever a man can command in an emergency. They look to all these things; and their willingness to loan, or their intention to withhold their money, is based upon considerations of that kind. I do not think, sir, Virginia ever went into the market to borrow money on her honor alone. I should think the state officers would not feel it any degradation to descend into particulars to show her ability as well as good intentions. It is that, after all, that comes into the question; and it is the ability of this new State to do what she may have to do that capitalists will consider also when it comes to our turn. That we shall have to assume a considerable portion of the debt there can be no question. Even on the plan set forth in the ordinance of charging to the new State all state expenditures within the limits thereof and a just proportion of the ordinary expenses of the state government since any part of the debt was contracted, and deducting from this the moneys paid into the state treasury during this period, if you go back to the time when

the debt of the State of Virginia began to grow, you will find there will be some debate in the beginning of it. How it is going to be adjusted, it is utterly impossible for me to say; because even when I have been disposed to make the calculation I have found I did not have the data on which to base it, nor do I think it exists in this section of the state—nowhere in the state but at Richmond. We have therefore to go on what we do know and what we can with some certainty anticipate. I look upon it that it cannot be possible that we shall have to assume less than six million of it. I put it at eight, as a rough calculation; but take it at $6,000,000, and then with seven per cent—six for interest and one for sinking fund—it is $420,000 to be raised only, as the gentleman proposes by special taxation. That is equal to the whole amount that is raised in all these counties that are to be erected into a new State—all the state tax. Here then is at once a doubling of the taxes. And yet those taxes, as we are paying them now, have been adjusted to the fact of a debt. Is it to be supposed that if these taxes, as they are now adjusted, yield four hundred thousand dollars, we can spare more than one-half of it to apply to the payment of old debts? And if we could, sir, have we nothing else to do? Why, sir, the first act of this new State must be to borrow money; not only to assume the debt, but to go in debt further. You have not a public building. You have not a penitentiary; you have not anything—nothing whatever. All this has got to be provided and provided at once; and for that purpose, you certainly will have to borrow money. I cannot remember figures, and I would not pretend to give on mere recollection. I can only make an approximation. I do not know what amount of bank stock previous to twenty years ago; but at that time the state resolved to increase the banking capital and money was borrowed for that purpose: no question about that. Bonds of the state were issued and sold especially to increase the banking capital of the state. A certain amount was assigned to banks here—quite certainly to the Northwestern Virginia Bank, because the branch at Parkersburg was then authorized on the strength of this increased subscription, and most certainly money was borrowed for that purpose. Now, sir, the United States, and perhaps other governments, come into the market and say they want to raise one million or two million or more millions of dollars. The United States have pledged the proceeds of the public lands at one time for the redemption of money they borrowed, and some states have pledged particular revenues; and it is no unusual thing to make special pledges of property for

the redemption of debt. They are crying out now that the treasury is almost exhausted. If you want to borrow money you must lay on the people equal to the payment of this money, the ordinary expenses of government and a sinking fund, or you cannot borrow it. We believe they will reason that the United States is good enough; the fact of eventual payment, we do not doubt. We hold the securities of the United States Government to be as good as gold, so far as ultimate result is concerned; but these matters become matters of daily sale in the market. As soon as these bonds are issued by the government, they are sold in all the money markets of the world from day to day and every day. Their value in the market depends on the permanence and certainty with which the interest is paid more than on the ultimate security. They are sold and bought—bought with a view of selling them again for a little profit and not for investment in them. In order to give them currency in the markets or a rapid and certain sale it must be shown that means is provided for meeting the interest regularly and certainly. That is what is required in reference to a proposed U. S. loan. Not that we doubt the solvency of the United States; but they want it fixed definitely that the money will be provided for the interest on these loans. Now, sir, if we have to go into the market as a new State to raise, if you please one million dollars we have got to show our ability. We may tell them that we intend to pay, that we are not repudiators, that we hold our obligations to be sacred; but the reply will be, let us see what your means are. These things sound very pretty to talk about honor and all that sort of thing; but it is not what is going to satisfy the public when you go into the market to borrow money.

Well, sir, notwithstanding what has been said, this hair-splitting, as it may be called, though not so intended, between moral obligation and legal obligation, I am not disposed to recognize any difference. I say if the State of Virginia held out to the world that among her means of payment were these bank stocks, these internal improvement stocks, that these were some of the items on which she relied for the ultimate payment of that debt, I insist the obligation is perfect whether moral or legal. Let us remember that by the very act of this operation, every dollar of this debt of Virginia is a moral obligation on us, a legal obligation on us. When two men are in partnership and wish to discontinue it, the dissolution of that partnership does not relieve the party going out from liability for the whole debt; and we have two things to do whenever this question comes up for prac-

tical adjustment. The first thing is to make the best bargain we can with the old state as to what proportion we shall pay, and then to getting the creditors to agree that if we pay that portion which we assume to pay we shall be relieved from the rest. How that is to be done, I am at a loss to conceive; and the only thing in which we are in any way favored is that we would stand as a sovereign State, and cannot be sued as a sovereign State. If we can succeed in effecting as much as that, we relieve ourselves greatly, but it is on the assumption that we can succeed in doing at least that much that my previous remarks have been based. We will not be held accountable for more than our fair proportion of this whole debt. If we are then to assume our place among the states of this Union; if we are to have and preserve in our hands the means of bettering our condition, the means of building up our State and providing for those public institutions we shall certainly need—a penitentiary and a state-house, at least—then it behooves us even at this early period in the matter to be looking carefully to see that we do not do anything to prejudice our credit in advance. It is possible—very possible that I may be over-anxious on this subject. It is possible that circumstances may turn out better than I anticipate. But I do very much apprehend that the whole assets of the state—I mean the public property of the state—that can be sold, such as its stocks in banks and in railroad companies, and canal companies, will be worthless. I do not mean to say—for I do not fear—that the stock of these banks here will be worthless; but then if the others are worthless and these the only ones worth anything, we would get our one-fifth of these. The subject is one that is going to cause much perplexity. It occasions perplexity enough whenever we look into it and think of it; and my impression is that we had better leave a fund like this where it can be applied to sustaining the credit of the State and not put it out of the hands of the legislature in this way and of those financial agents who will have to encounter the debt and provide for it. We are, as I said, at last, about to take a leap in the dark; and I think it is the better plan not at this time to appropriate any of these funds in this way. Gentlemen may talk about probabilities and improbabilities of this State aiding in the construction of works of internal improvement. That may be virtually an impossibility. When will the day arrive, in the present state of things, that begins saddled with a debt can borrow money so that she can be distributing it about in internal improvements? To say nothing of the fact that public opinion ev-

erywhere is setting most strongly against states being concerned in these works and probably it may be the opinion of the citizens of the State when the subject comes to be considered. To say nothing about that, it appears to me as an absolute impossibility that this State will for 15 or 20 years at least be able to appropriate one dollar in aid of internal improvements. I say so, sir, because I believe the demands on the State which will be made—the demands arising out of the original debt, out of the cost of those necessary State institutions which we must have—will absorb all the revenues that the State is able to raise.

Again, sir, we see now that this state is in debt now to the tune of some forty millions exclusive of their war debt, which we do not have to assume—some forty millions. Pennsylvania, a state, I believe, of greater resources—that is of greater natural resources and whose resources were more developed—was obliged to repudiate in the hard times a few years ago on a debt of forty-four millions. She struggled hard and long. She finally funded her interest, paying interest on interest. The State of Maryland was placed in the same fix. She also is now extricating herself. But for several years both these states sat in the light of repudiating states. If forty millions is, as there is every indication to believe, as much as the whole state ought to bear, then, sir, most certainly any fair proportion that may be assigned to this new State of forty millions will be as much as we can stagger under. Because, whatever may be our natural resources—whatever may be the wealth that is lying waiting for somebody to pluck it, as it were, it is a well-known fact that our portion of the state is not as well developed as the eastern or any of the other states I have mentioned. The prospect to me, sir, is a gloomy one; and nothing but harmony and a disposition among our citizens to carry out what they have begun and submit to inconveniences for a number of years in order that we may establish on a firm basis this new State, will carry us through. We will need the combined exercise of a generous and liberal support of every citizen to establish ourselves in such way that we may derive from its operation the benefits it is calculated to confer when we can place ourselves in a proper position in reference to it.

Again, sir, the gentleman from Kanawha alluded to the effect this may have on the acceptibility of our proposition in Congress. He tells you perhaps fifteen millions of this debt is held in New York. Well, sir, how much of this debt is held here in the northwest? I am not able to fix the amount; but in the States of Indiana,

Illinois, and Ohio and I believe Michigan—in all these states where the banks are founded on the deposit of stocks, there are large amounts of the bonds of Virginia held by those banks, unless they have disposed of them since the ordinance of secession went into force. There are large amounts held in these states, and I do not know but others. And what is the consequence? If this goes to Congress, if there is anything that looks like—even if they think it looks like—unfairness in reference to this debt, if we could satisfy them of the ability of this western portion of the state to meet her share, whatever that may be, of the debt; satisfy them that she is husbanding, as it were, her resources for that purpose, we shall meet no opposition there. Remember that in the Senate of the United States, as at present constituted, 21 or 22 states, having about 40 Senators, states coming in there of 8, 10, or 12 Senators directly interested in this question of the debt, will use their power to enforce upon us such provisions in reference to this debt as they will think just and right. Nobody who knows my sentiments on these subjects will accuse me of any want of a disposition to aid this school fund to the utmost of my ability. Personally, I am ready to submit to almost any kind of taxes necessary for the purpose. I know that the welfare of this State, and every state, is bound up in this subject of education. I know if you allow population to grow up in ignorance it will grow up also in vice; and I know that while education does not of itself furnish those moral restraints, which must come from a higher source, yet we all do know that intimately connected with the legitimate education given to children in our public schools at this time is the teaching of moral obligations of men from the higher source. We know also that to give them the ability to see for themselves and learn from the Book of all books what are their duties is placing in his hands a great advantages. I am as sure as any man can be that the highest and most binding duty of any community is to provide for the education of its children. I may be told that my money is to be spent in the education of other people's children. That is not the reason, for the State owes it as a duty to the children themselves who are to become its future citizens. That is not an argument that can be established in the case. I trust the great majority of this Convention are disposed to do the best they can for the creation of a school fund; but strong as my disposition is to aid in that object, I must take that view of the whole ground and consider our duty in other quarters which the circumstances demand. If we do start this State in a

crippled condition, if we are not able to place it at once on such a basis in reference to the popular credit, as will enable her to go on, all the provisions you can make with reference to education of children or anything else will be futile and inoperative. Because, at the very foundation of it all must lie the ability of the State to maintain itself.

Now, sir, I hold that moral obligation is of a higher character than legal obligation. You cannot enforce moral obligations when they are only that in courts of justice. You can enforce legal obligations in courts of justice; and in that very fact I find when it is left to my individual sense of right and justice the obligation stronger than when it is a mere legal obligation. The moral philosophy of Paley lays it down as a fact that when the law imposes a penalty for that which is not wrong in itself but simply arises out of the condition of the government the man is justified by paying the penalty in doing the act just forbidden. I do not coincide with him in his doctrine by any means, but it seems when there is a legal obligation we are all inclined to go so far as that obligation compels us to go and no farther. But in moral obligation we look to something underlying the letter of the law, and a man of right conscience will endeavor to go to the full extent of the obligation. We all shirk it; slip aside from it by any manner of means. And if I am right in this, we by the fact that whenever loans have been applied for and is offered in the market by the State of Virginia, these have always been put in the circulars that have been issued—circulars we never saw in the west—but issued under the authority of the state, always have these bank and internal improvement stocks put down as among the resources of the state applicable to the payment of her debts.

I have gone further into this matter than seems to be called for by the particular question that is pending; but it does involve great principles and it is necessary we should look into the matter which would have come up more properly under the report of the Committee on Taxation and Finance. That committee have had the charge of looking into our present situation as far as the means in hand permit, and I have no doubt if the chairman was here he could give us valuable information. But I am so persuaded that there is a moral pledge of these bank stocks and internal improvement stocks to the redemption of the debt that I am not willing to give them any other disposition; and as I have already stated, if that obligation rests on the State of Virginia at large, qualifies the whole debt, it rests on this new State just as much

in reference to the portion of the debt it will be compelled to assume. I think it is risking something to put these here. I think it is risking perhaps the assent of Congress to this separation. I think it is risking something more than that, sir. It may be placing out of our hands perhaps the only cash fund to which we will have any access if you confine it to the banks in this city; for in order to assume the debt we must provide for a state sinking fund. We ought to have something at our command to go upon. If you place these stocks into the education fund they take a permanent position and the dividends will go into that fund; and unless those dividends are actually distributed for school purposes the residue will go into that fund. Not a dollar would be applicable to the meeting of this interest. We will want these funds, and if we can rely on these banks to be paying us something from the start, then it is very meet we should keep that cash means where we will have within control of the authorities of the State one that can be applied to this interest.

I say again, that if we go into this matter it is like taking a leap in the dark. I am satisfied our proportion of the debt will be much larger than many persons have supposed; much larger than those supposed who were rushing matters in August last; because I know many then did suppose we were going to get rid of the old debt by setting up a new State. But that cannot be. I trust therefore that this clause will not be adopted.

MR. BATTELLE. I have one suggestion to make, and that is that to my mind there is no data upon which the gentleman can give us anything like an approximation to accuracy in reference to what is to be the debt of this new State. It may be what he estimates and it may be much less. Of course, we all agree that whatever it is to be, it is to be paid. But there is such an unprecedented state of things in this part of Virginia and throughout Virginia that it is absolutely impossible for anybody to arrive at anything like an approximation of that debt. But be it much or little, the gentleman's argument, as before shown, fails in this, that this bank stock owned by the state is no more responsible, no more pledged, than any other property owned by the state; and as has been shown, his argument would apply against the expenditure of money for school purposes derived from any source whatever as effectually as against this.

There is one other suggestion I wish to make. How do you derive means to pay your state debt at all? By taxation. By

taxation of what? Persons and property. Just, then, in proportion to the number of persons and the value of property in the State will be our ability to pay our debts. If we have a great many people and a great deal of property, it makes no difference whether you have any bank stock or not; we can pay our debts. But if we are to have a sparse population and limited resources, capitalists as well as other people will take this into account in the proposed estimate of state condition. Now, there is one point we may as well look square in the face right here and now—and that is, we must have a system of free schools provided for. I believe that is now, simply as a practical question and simply in the same vein and line of thought of gentlemen who have spoken before. When we have the means of paying our debts at all—be they much or little—to meet our responsibilities, we must have some means provided for the education of the people at large. We have free schools in Ohio, Pennsylvania, in Indiana, Illinois, Iowa, Wisconsin, Minnesota, and all throughout the broad plains of the West. The people have been leaving West Virginia in droves, to my certain knowledge in great part influenced by the fact that elsewhere they could educate their children, and here they could not do it. Now, this is a matter that comes home to every citizen, to all our families, to all our communities. For to a parent loving his children there is no interest on earth, nothing beneath the heavens, next to his soul, that so intimately and nearly concerns him as providing the means of instruction for his children; and every day and every year, in the advancement of these times, that feeling is increasing, and unless this Convention does something that shows we are in earnest and mean to do something more than mere *brutum fulmen*, a mere "tub to the whale," unless we make a provision which means business on this subject, we may depend, sir, our ability to pay our debts will go on lessening and decreasing because we have not the people and the wealth to do it from the fact that under existing conditions our people are seeking homes and business in places where they can educate their children. Now, when emigrants propose to come here, what will be the first question the emigrant asks? It is a question that comes up every day. When a man proposes to buy a farm and move from one county to another, if he be a parent, the head of a family, in making his selection of a farm, other things being equal, he always has reference to the means of his condition in this respect. In some sections of our country we have had schools; perhaps in all of them we have occasionally. But this question in reference to

the provision in the neighborhood, the facilities in the neighborhood, for school purposes, is one that always enters into his calculations if he be a parent, in selecting his locality.

I say, then, sir, that as a question of political economy—as a simple practical question as to means of increasing our ability to meet all obligations against us as a people, we need to do something vigorous, not extravagant. There is nothing extravagant proposed in this section, but to do something to satisfy the people we are in earnest in providing the means as soon as may be, and as effectually as may be, for the purpose of meeting that felt want all over our country. If we do not, sir, it will be one of the defects that will cause us to lose population and capital, and taxes—and all. These capitalists are very shrewd men, sir, and if you propose to borrow money, if they saw here a provision for a wasteful extravagance, of course they would decline; but if they saw a provision such as, from the admitted all over the states of this Union was well calculated to provide for filling up the State with population and energy, numbers and capital, they would find—and sensibly find—in that a basis on which to predicate sufficient loans to meet the wants of the State.

MR. DILLE. I have listened during the progress of this discussion with a great deal of pleasure. I am delighted with the disposition manifested by all who have spoken not only on the subject of education, but the subject of great importance, that interests us all, the taxation and finances of the State. I think that both of these subjects should be met not hastily, not with rashness, but with a disposition to view both of them as practical questions with which we are all individually interested. I was delighted to listen to the remarks of my learned and distinguished friend from Wood (Van Winkle) although I differ with him as to the place when his remarks would properly come up. I may be mistaken, but it seemed to me that the question upon which he very truly remarked that we ought to approach so carefully and cautiously, that it was not properly before the Convention. It seems to me that really the question here is a practical question that must come up in the future action in the State, that the question as to the disposition of the bank stock or the stock held by the State of Virginia in the different corporations of the state, has nothing to do with the question here before the Convention; that the State of West Virginia has no bank stocks; would have no bank stocks; if she were admitted into the Union tomorrow, she

would not have a single dollar of bank stocks nor a single dollar of corporation stocks; that all the bank stocks she ever will have will be acquired through the act of her legislature and that legislature can act with reference to the disposition of any fund that she may have in these banks, and if she is disposed to invest money in bank stock or in any corporation that when she makes that investment the profits arising therefrom will be diverted to the purposes of education; that when the stocks are sold they will also be diverted to the same purpose.

Now, this provision here seems to me to amount almost to nothing; and my objection to it would be that it does not reach far enough. It does not take the proper position in reference to it. Now, my motion—and I will throw it out merely as a suggestion to the chairman of this committee—is this: that there ought to be a fund drawn from the banks of this State and diverted to the purposes of education. The banks having received certain peculiar and exclusive privileges as corporations ought, after they have made a fair and proper profit—a profit beyond what any individual not investing in bank stocks can make—that surplus when it amounts to say eight per cent should be diverted and the State should have the benefit of one-half per cent.

MR. BATTELLE. Will the gentleman allow me a moment?

MR. DILLE. Yes, sir.

MR. BATTELLE. The suggestion of my friend from Preston I think needs a subsequent provision.

MR. DILLE. What? I have not examined it carefully.

MR. BATTELLE (reading). "The proceeds of any taxes that are now or that may hereafter be levied on the property or revenues of any corporation." It does not provide the absolute requirement that such taxes should be laid, but should they be, provides their direction.

MR. DILLE. Now, so far as concerns any bank stocks that this State may hereafter have, I have no idea that ever this State will invest a dollar, in any future action, in the stocks of the State of Virginia; nor unless the disposition of our people changed very materially, and unless our future grows bright very rapidly, I fear she will never be able to. And I may say I do not desire that she may invest money in corporations for purposes of internal improvement; but were she to do so, why this whole subject comes

up; and if she invests money in it here is a constitutional provision that she knows at the time she makes that investment in bank stock or in any work of internal improvement that the proceeds arising from that investment will be diverted for the purposes of education. Now, I agree with every word that my friend from Wood has said in reference to the bank stocks in the State of Virginia—every single word he has uttered on this subject, I most cordially agree. I am as free to agree with him on that subject as I am on any other subject, that so far as the bank stocks of the state are concerned, so far as concerns the works of internal improvement of the State of Virginia wherever located, in whatever locality they may be, that it being a part of the assets of the state it properly should be directed to the payment of the debt; and I further agree with him that wherever capitalists have invested money in the stocks of the State of Virginia, wherever the State of Virginia has contracted debt, that capitalists have always looked to the bank stocks as well as any other of the assets they may have. As he remarks, almost every auditor's report that I have any recollection of observing for the last ten or fifteen years showed the bank stocks set down to the credit of the state, and the works of internal improvement, wherever they pay, are set down as an asset of the state, and the condition at any time of the finances of the state is ascertained in that way. Whilst that is the case, I think we would be acting unfairly, I think we would be acting dishonestly, that we would be acting in bad faith as a state—that is, as the State of Virginia, not the State of West Virginia, but as the State of Virginia—in these different banks, if I recollect aright, amounting to nearly a half million now, should be applied to that portion of the debt of the state to which they properly belong. If the debt was contracted in receiving money that was invested in those banks, it ought to be directed in that channel which would liquidate that debt. And it seems to me, as we agree in reference to that thing the only question that may arise, that could properly arise, in the investigation of this matter before us is this: suppose in a final settlement between the State of West Virginia and the old State of Virginia that those bank stocks that the State of Virginia may own may fall to us, lying and being included within our territory, then what disposition should we as a State make of those funds? Now, I think it would be right, viewing the question in that light should the stocks of the State of Virginia in the Northwestern Bank here fall to us, that having taken that amount of stock that originally belonged to the State

of Virginia we ought to assume so much of the debt of the State of Virginia; and when that bank goes into liquidation that fund ought to be diverted and not taken possession of by the State of Virginia but diverted to its proper channel and applied to the payment of the debt—that portion of the debt that we assume as a State—and thereby release us from that portion of the obligation that we may have been compelled to assume. It is only with that view of the question that this matter can arise. But it seems to me that whenever this becomes a State, she does not thereby get the assets, the stock of any bank within her boundaries as a portion of her assets at all; that it belongs to the State of Virginia; and that it should be applied strictly to the payment of the debt of Virginia. So with any other stocks that she may hold in corporations within our boundaries that belong to the State of Virginia; and we do not thereby, by being taken into the Union acquire any control over it further than the State of Virginia may transfer that fund to this portion of the state if she assumes her portion of the debt of Virginia. All that, of course, will be a matter of arrangement if ever an arrangement takes place between the State of Virginia and the State of West Virginia.

Now, I think, viewing the question in the light I do, and looking at it in that way, that really the provision here may amount to nothing. We may never get one single dollar as a school fund in this way without the legislature may determine in its wisdom to invest money in a corporation or a bank for that particular purpose, because as she makes an investment for that particular purpose, that this provision in the Constitution will show the direction that that investment shall take; and it is only with that view, and I can see no danger to be apprehended from the operation, because if she makes that investment, at the time she makes it she knows what is the effect of the investment, and she may conclude to do it; in her wisdom, she may conclude to make such an investment. She may conclude to make an investment in an incorporated company for the construction of a railroad. She may have surplus funds for that purpose and do it with a view of making such an investment as may add at some future period in her history to the school fund of the State. Should she do so, she does it knowing that that is the channel that she intended that fund to take. With that view of the case, I am disposed to vote for the provision as it is. I can see no reason for discriminating; I can see no reason why we should draw a distinction between a bank and a corporation—replying particularly to the amendment of the gentleman from

Kanawha; because if she makes that kind of an investment, she may make it for that specific purpose. If she concludes to make the investment in bank stock, why it takes that channel. If she makes it in a corporation for the construction of works of internal improvement, why it takes that channel. Hence, I shall vote against the amendment in this instance and in favor of the proposition and against the motion to strike out.

At the usual hour, the Convention took a recess.

AFTERNOON SESSION

The Convention re-assembled at the appointed hour.

MR. VAN WINKLE. Mr. President, before this matter is proceeded in, I am not going to make any remarks—I will read a paragraph from the Constitution of Virginia and leave it with the remarks I made this morning. I read from the 30th section of the 4th article of the Constitution of Virginia:

"The general assembly may at any time direct a sale of the stocks held by the commonwealth in internal improvement and other companies; but the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the sinking fund, and be applied in like manner."

There is a specific pledge the gentlemen were waiting for this morning.

THE PRESIDENT. When the Convention took a recess, it had under consideration section 1 of the report of the Committee on Education, the question being on the motion of the gentleman from Wood to strike out the second clause and the amendatory motion made by the gentleman from Kanawha to strike out only the words "or other corporation."

MR. PARKER. Mr. President, during the recess I looked up some documents that I had to ascertain as near as I could the indebtment of the old state and to form some estimate of how we were to come out on the settlement with her.

A settlement on the principles which are laid down in the ordinance passed by the convention last summer, I take to be binding upon us and upon the legislature of the State of Virginia,

now and at all times, and likewise binding on the legislature of West Virginia when we arrive at that point. The terms on which the settlement shall be made are laid down there, and those terms must bind all of us for the reason, simply that it is the ordinance of the whole people of Virginia in their sovereign capacity, binding the legislatures of fractional parts, as we are—the legislature and the Constitution this Convention shall ordain, and the legislatures of Virginia.

I find the indebtment to be on the 1st day of January, 1860—the ordinance dates, I think, to the 1st day of January, 1861, one year after this date—the whole amount of indebtment at that time, taking the guaranteed bonds, was $34,439,659.63; registered and coupon bonds $31,679,659.63; guaranteed bonds, which the state would have to pay as an absolute levy, $2,670,000, making $34,439,659.63. Then there is what the state owes to the literary fund, with which I suppose we need not encumber our calculations. Consider that as an indebtment of the state it is $1,279,679. Then the liabilities which was a guaranty for several of the railroads, amounted to $1,138,500. Then the session of 1859-60. This calculation was made in March, 1861. The session of '59-'60 made appropriations as is well known, to the amount of $9,611,857.37. I suppose that is from that time prior to the 1st of January, 1861. A very large amount of that had been expended and probably the bonds had not issued—a very great amount.

That is now the exact standing. I get it from a report of a select committee which was made in March, 1861, to the legislature—reliable, I presume. We standing about one-fifth of the population, as remarked by the gentleman from Wood, about 360,000, I think is our population; the whole population of the state is 1,500,000; so about one-fifth would be—

MR. VAN WINKLE. White population?

MR. PARKER. The whole white population is, I think, a little over a million. We are to pay then a just proportion, taking the ordinance, of the ordinary expenses of the government from the time this debt commenced to accumulate. That is, first, a just proportion and the amount that state has expended within our limits. That is another sum which is definite and clear. We can look round and see what has been expended. And then we are to be credited with all the taxes that we have paid from the counties lying within the limits of the new State since the debt commenced to accumulate.

Now, a just proportion. The question is, on what basis are we to arrive at the "a just proportion." The ordinance there leaves it—does not indicate what basis, whether of population or valuation, but a "just proportion." Now, if our share is to be determined by the population, including slaves who have not been assessed for their value, we have paid a large excess over our proportion. If we take the population per capita and include the slaves and what their valuation would have been during all this period, or most of it, I do not know precisely how we could arrive at a valuation. It was very low when the debt commenced and has always been very much below real values. Our valuations west of the mountains have been on our cows and horses the full value of them. It is so here on all kinds of property. If we take the population, it will give us a large excess that we have paid towards the current expenses. We are to pay our just proportion of the current expenses of the government. Now if we have been paying on this under-valuation in the east, if we make the population the basis, we have been paying a great deal more than our just proportion of the ordinary expenses of the government and hence there would be a large balance on that score now our due. But suppose we take the valuation; well, it is to be a just valuation. The word "just" which the people have ordained and put in there, means just valuation, just proportion. Now, I say to put it on the valuation of property there is an excess in our favor, because a just valuation will require, of course, that property will have to be assessed up to its value. The effect will be it will raise their valuation on the east side of the mountains very much; so far as the valuation of the negro is concerned, nearly double it. As that is raised up to its proper standard, of course, their proportion of the ordinary expenses of the government is raised up just as it is raised when we take population, per capita, as the basis. Precisely. It seems to me very clear that it would bring us to that conclusion, and that the legislature of the mother state if we shall be fortunate enough to get set up for ourselves she must be bound by this ordinance in that settlement. Now comes the question of what has been expended. I merely mentioned this as touching the ordinary expenses of the government. Now, how much has been expended in our territory? I know it is very little.

THE PRESIDENT. The Chair would remind the gentleman that he should confine himself as near to the subject as he can.

MR. PARKER. I will come to it in a moment. Every gentleman knows what has been expended. Therefore it seems to me that in taking what has been expended and then crediting us with all the taxes we have paid and deducting our fair proportion of what would be the ordinary expenses of the state government that it must leave a large balance on settlement due from the old state to the new.

The gentleman from Kanawha spoke rather lightly of my humble efforts to keep out Allegheny. I did it and that on the principles there laid down. I kept from the new State, which we should inevitably have had to pay, seven millions. I find that sum was expended there, and the expenditure would have been of no value to us at all. If the gentleman is proud of his efforts to have that seven millions saddled on the new State, I have no reason to be ashamed of my effort to prevent it. But that I care not for.

Now the particular question, being the amendment of the gentleman from Kanawha, I was for striking out this bank stock. We must have some money to get along, and it will not do to give everything to the school fund. We must take care of other things if we expect to get along with our new State. Many things are wanted; cash is wanted. There is no doubt you are right in fostering the free public schools, and we cannot do this better, nor better provide for the future growth and support of the State, than by devoting the amount to be derived from these bank stocks as a permanent school fund. On looking the whole matter over I was first impressed the other way, before I had made the examination which I had adverted to. I thought we were going to be short and could not spare it. But in view of the facts stated by me, I feel it will be my duty to vote for the amount of the stock, which amounts to about a half million, being appropriated as a permanent school fund for the new State, and do think it will do us more good in Congress—increase our prestige there and in fact everywhere; that it is the best thing we can have is that placed in our Constitution.

MR. BROWN of Kanawha. I desire to confine my remarks to the simple question of striking out the words "or other corporations" in the 6th line. My motive is that, if it stands here it is a blow directly at the whole system of internal improvements, that it is, in other words, fixing here a direction given to the proceeds of all works of internal improvement, which would have the effect

of preventing the State from ever embarking in it and thereby leaving us a State of mountains land-locked until the wealthy people should endeavor to find a way out. Now, sir, one of the very operations, I feel one of the wrongs, under which the western people have groaned for long years past has been that we have been denied the privilege of appropriating the proceeds of our taxes to our own internal improvements, levied on us and spent in the east, and our western portion of the state is now where it was fifty years ago, standing, sir, in the forest, and although the wild man does not tread the hills the white man has not yet been able to clear the fields. I wish to see in this State instead of a constitutional law prohibiting the State from exercising its power to develop the resources of the country, I wish to see this exercised for the very purpose of entering into that forest and opening to the country the resources that are here, lie hidden, locked up. And I confess it does grieve me to see the opposition coming to the system from those gentlemen who live along the lines of the only railroads in the western part of the state; that those who have received benefits and have sections of the country developed by internal improvements shall be the first to forbid in the organic law the state every right on the part of the state to open and develop the resources of the state. Adopt this system and where does three-fourths of the territory of the state find itself? Without any works of internal improvement, without any hope of obtaining any, without the means themselves to make it, with a country rich in all that constitutes wealth if only brought to light by the fostering hand of the state government. It is upon the simple question that this looks to the locking up the Constitution of the State against developing the resources and wealth of the State by internal improvements, that I wish it stricken out. I hope that every gentleman that represents any section of the state participating in the blessings that they have been bearing their portion of the burdens of the whole state will stand by me in that effort and to stand there also when the question shall come up on taxation and finance; to strike out in that section the very similar provisions that are to be made to manacle the State before it starts. I shall not enter here on the discussion of the other topics; I only seek to strike out the clause of this section for the reasons I have indicated.

MR. VAN WINKLE. The gentleman is under a misapprehension if he supposes we have ever received one dollar of state money

—if our railroad ever got one dollar. We have sunk our own money —absolutely sunk—in our quarter in the Baltimore & Ohio Railroad that is now getting to pay something. But as for our own railroad, we have never had one dollar from the state; and it was with the greatest difficulty we could even get the privilege of building it with our own money. Every gentleman knows how long the east resisted every effort of the west to get a charter authorizing the Baltimore and Ohio Railroad to come west of the mountains. As to the improvement of turnpikes, I think that thing has been about as fairly distributed in one section of the west as in the other. As I have said certainly fifteen or twenty years must elapse before the State may be able to appropriate one dollar for such purposes however much disposed. Certainly a state that starts out loaded with debt cannot expect to; and if the gentleman from Cabell is right in his figures—and he is, no doubt —I underrated that debt instead of over stating it this morning. He has called to my attention the facts that we have about four hundred thousand inhabitants and are about one-third of the state.

MR. PARKER. Three hundred and forty-eight thousand.

MR. VAN WINKLE. Well, sir, if the debt is to be apportioned according to white population—and the chances favor that mode —we have about one-third of that debt to shoulder. They estimate it at thirty-four millions January 1, 1860. The interest on the same is $1,008,000, a year and a good deal unpaid interest since last fall—perhaps three payments. There is another million at least of that debt already. And that interest will go on, and before we can get this new State into operation three or four millions of interest will be added to that debt. Where is the use of talking about appropriating for internal improvements when we commence with a debt as heavy as we can stagger under? When I showed that Pennsylvania, with a debt not so large as Virginia's, had to repudiate. The debt of Pennsylvania at that time was $44,000,000, and she had paying works of internal improvement to show for it—which we have not. Her population was much greater. The consequence is that Virginia has been hovering over the volcano; and even if it had been nothing but a financial panic or disturbance, such as we had in 1837-8, Virginia might have been in the same situation as Pennsylvania was at that time. Then what is this State, in its unprepared situation—without public buildings, which have to be provided, and many other things —is it possible that she can go on and raise money by taxation

to be applied to internal improvements? To me, sir, the idea is most preposterous that within twenty years such a time would arrive when she could with justice to her creditors appropriate one dollar for any such purpose. It is an additional reason why we should seek this separation that we could manage our affairs better; but we must acknowledge, to ourselves at least, that we start with a heavy debt. I am not deterred from pursuing what we are doing here, going on and building this Constitution, and asking its adoption by the people; I am not deterred from asking the assent of Congress, by this. I am more than ever impelled to pursue and act and succeed if we can in erecting this new State; but I am not going to shut my eyes, as many gentlemen have been doing ever since August last to the fact that it is no child's-play setting up a new State under the circumstances that surround us. There is going to be no child's-play for some years after we get into operation to maintain its credit and standing. It will need the united exertions of almost every citizen if we are enabled to maintain ourselves at all without repudiation. I do not mean by that term the actual denying of the debt, the saying that we will not pay it; but I look to the possible circumstances of being left unable to meet the interest on it as it accumulates. Taking that debt at even the low amount of six millions, as I stated it, take the taxation that will be rendered necessary, if it is to be done by taxation, to buy our public buildings and put the new State into operation; take our annual outlay for the maintenance of such government as we must have, the taxes which will inevitably come from the national government, and you will see at once that our people will be harassed enough by taxes without paying anything to it unnecessarily; and as I said before, we will be utterly unable to do any such thing.

Now, sir, since I am up, I have read from the present Constitution of Virginia in which they say that if any of these stocks are sold, they shall go to the sinking fund which is formed for the redemption of this debt. If there can be a specific pledge of anything, it is to be found in that section of the constitution. The legislature here is still the Legislature of Virginia. Imagine for one moment that every part of Virginia is represented. If you obey this provision here the plainest dictates of duty, of interest, would lead them to refuse their assent to your Constitution. And I can tell gentlemen that perhaps there may be some other influences that will be attempting to get things into this Constitution that will not pass that body. They have duties and responsibili-

ties to the whole State of Virginia, and we must satisfy them that we are not doing injustice to the whole state. Looking to Congress, we shall perhaps have the slavery question to contend with. We shall have some refusing on that account and some on account of what they will call setting a bad precedent of allowing states to be cut up and divided and bringing a disproportionate representation in the Senate. Remember our State will claim as many senators there as New York with its four millions. Again, others may think it is setting a precedent that may induce other old states to separate its territory with a view of getting more influence in the Senate. If the question comes up between east and west, well then we come up here, as it were, applying the means that are intended for the payment of this debt to another object. And there is New York with her fifteen millions of interest in the debt of Virginia; then comes the northwestern states with their banks holding for the securities of their people these very bonds of Virginia as security for the circulation of their banks; and if you go to do anything of this kind, there will be some more votes against you. Now, just combine all these elements of opposition when you go to Congress, some on one account, some on another—but a few in each case perhaps; but in that body, which consists now of 244 or 246 members, it does not take a great many votes to defeat it; and if you array against you eleven or twelve states you would be defeated.

These things, sir, have got to be considered. This thing is not going right through without difficulty. We must conform this Constitution, as nearly as possible to the things around us, and when we go before these bodies we must endeavor to get before them in such way that there will be no real tangible objection to the Constitution we are forming. If we do not do that, if we are careless about that, if to carry out any private views or any public views we do what may breed dissatisfaction in either of these bodies, why, sir, our Constitution is rejected and assent is refused, and we are just where we were before we began this movement. Now, I ask gentlemen to examine for themselves; to look into this question seriously and steadily. First, whether the State is pledged by the Virginia constitution against any such depository of these funds or property? If it is, that ought to be sufficient cause. If we set out in the very beginning by exercising bad faith towards the creditors of the State of Virginia, who are our creditors—who would be—we should be condemned in

the public estimation; and of course we need look for no favors —if it is a favor—from Congress.

Now, I would ask the attention of the Convention again to the precise terms of the provision of the Virginia constitution read by me directly after the recess:

"The general assembly may at any time direct a sale of the stocks held by the commonwealth in internal improvement and other companies; but the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the sinking fund, and be applied in like manner."

Now, that sinking fund is constituted for the payment of that debt. Under this very Constitution the legislature are pledged annually to put one per cent of the debt as it existed at the time that Constitution went into operation into that fund. This one per cent will be sufficient, if the fund is properly managed to pay off the whole debt in 34 years; but a good deal of that debt is due before 1870 and some of it the legislature has reserved the right to pay at its pleasure; and some of that is, possibly, I think, before 1870, and possibly a large portion of the then existing debt. In order now to give credit to the state to raise money for various purposes I believe some bonds came out very shortly after that time and new ones had to be issued. That clause was put into the constitution for that express purpose. It went forth to everybody who thought of taking and purchasing bonds of the state, and it said to them there is a fund with this view and these were pledged to go to that sinking fund for the redemption of the debt; and I repeat that in every report from the auditor's office I have seen—and I believe I have seen them annually, or as often as they were issued—a statement of the finances of the state is made up and these are always set out as against the debt. The available stocks thus paying dividends and those not are separated; but both are put down as among the means of the state; and in circulars and other things issued from the auditor's office for the information of the people this same fact is stated. If this clause was not in the Constitution, there is nothing in that to show that people have been compelled to lend their money on the strength of those resources of the state in part. I contend therefore, sir, that there ought to be no hesitation about striking out this clause entirely. I contend there is some danger in leaving it there, danger of having our creditors and both the legislature of Virginia and

the Congress of the United States refusing their assent to the introduction of this new State.

These are my views, sir, about the same as I expressed this morning; but I repeat them now because I have that provision of the Constitution to base them upon, which I had not at that time. I spoke then that there was something pledging the stocks but I did not assert it, because I did not know it certain. I assert it now without fear of contradiction that that clause in the Constitution is an express pledge to the creditors of the state of this property, these stocks, for the payment of that debt; and if we divert it from that the purpose no matter how worthy the other purpose may be—and I said enough this morning to show that I am as far as any of you in desiring to have a good school fund; but I would be just before I am generous; I would be just even to the stranger even before I am just to ourselves. I would see that the credit, and I may add the honor, of this State is not tarnished by any act of ours here. I would place those funds where they have been already appropriated. I would leave them as the committee on taxation, I understand, reported, that they shall be appropriated to the sinking fund; but I have said, and say again, that we ourselves will be under the necessity of borrowing money before we are a year old in our new State, and unless we have the credit of good faith to back us, unless we can show that our means are or will be ample for the redemption of our portion of the state debt, not one solitary cent will we get in the market unless it is at an immense discount. We ought to be able, as other states are, to borrow at something near par. But to do this, our record of good faith must be clear. No people was ever so much in the hands of providence as we are, for we do not know how even to guess at the future. If our armies are successful tomorrow, if the foe is defeated and put down, why the complications of this time would only have about commenced. Imagine the best way you possibly can, yet there are behind it complications which may make us all shudder and tremble for our fate. Our country is in danger. There is no use of disguising it. Our Constitution is in danger; our institutions are in danger; everything that is dear or should be dear to men is in danger, so far as it may depend on human efforts, but depends it is true very little in the grand complication of affairs upon ourselves. But only so much the more is it the duty of every one of us to approach all these matters cautiously and be sure that we do right. If there is a doubt, room for any hesitation about adopting any measure as grave and im-

portant as this, we had better leave it, set it aside, not venture upon it in this state of things. If this State shall be in a situation to appropriate this property to the school fund, it can be done hereafter by the legislature; but if we do it in advance we block the game upon ourselves. We shut out the power to borrow money. And I think no man can hesitate in believing we shall have to borrow money before we go far into this business, or else we must tax our people worse ten times, or at least a great deal worse than they have ever been taxed under the rule of the State of Virginia. What might be their condition by remaining in the state, even if peace were restored, I need not say. I believe it will be worse than in the new State. And that is another argument for the new State. But we will not act from any other motive than strict justice and right to place ourselves in a position we shall hereafter regret.

MR. STUART of Doddridge. This discussion, sir, has taken a very wide range. I would say to my friend from Ohio that if he will look at this subject as I look at it he will find he attains nothing by his motion. There are two positive ways by which the public debt can be settled between West Virginia and Virginia: on the principle as laid down in the ordinance last August or on the principle that public property—all the property held by the state—shall be exposed to sale and sold for whatever it will bring and be applied to the payment of the public debt. I for one never will be willing to tax my people with an equal portion of this debt according to the white population unless we have a credit with the amount of improvements the eastern portion of the state has got and for which this debt was incurred. Never in the world. It would be unjust and unfair, and I for one never would agree to it. Never! I am for paying the public debt; but surely it will not be asserted here that we should pay "a just proportion" of this debt taking the white population as a basis and leaving all the public property in the hands of the State of Virginia.

MR. BROWN of Kanawha. I would like to know what is the estimation of the value of all the public property in the State of Virginia.

THE PRESIDENT. I do not know anything about the correct amount.

MR. STUART of Doddridge. But I know one thing, sir, and it is a question that has not as yet properly been raised and I desire

to give my views on it: that there is no public property in Virginia, only the state's own stocks, but what is worth something. It would pay a dividend to the state; but if it is exposed to sale it will bring something; and whoever is the purchaser, he will bid and pay for it, looking to the revenue he will receive from it, not what the state receives from it. Now, would not that be reasonable? You see public property in a great many instances is not paying a revenue to the state because they were large investments and cost the state a great deal, but whoever becomes purchaser will pay only to that extent in which he will expect to derive revenue from the amount of money he invests. Now that is very plain to me, and that West Virginia should never agree in this world to make a settlement on any other principle whatever. We will not pay our proportion according to the white population, unless we have an interest incurred in making this debt or we will have the principle as laid down in the ordinance, I will fight against any other as long as I can stand on top of the ground. I am not going to tax my people ungenerously and unrighteously. I am willing to say we will pay our just part of the debt but if we leave all these improvements to old Virginia she ought to have to account for them in some way. If they are not worth much, let them go for what they will bring. And that is why I am opposed to striking out these stocks. But I must say to the gentleman from Kanawha, I am sorry. I am an internal improvement man; and I believe, sir, this will perhaps block up this thing very much, from the fact that some pending railroad and other charters granted by the legislature and we may want to pledge this improvement for the payment of the money we will have to borrow for the purpose of building those roads, and if it is encumbered in this way we cannot do it.

I think there has been enough discussion in this matter, and it strikes me it is better to strike out this provision as there can be nothing got by it. Because the State of West Virginia would have no stocks at the time she becomes a State, and if she ever has it will have to be after she has become a State; and if she has any old stocks it must be by some understanding with the old state and that never will be done except they go to the payment of the public debt. That is my opinion of it. If, as the gentleman from Wood remarks, it is a constitutional provision.

MR. BATTELLE. I beg leave, very deferentially, to suggest in reference especially to the argument of the gentleman from

Wood, that it would be best—at least I very much desire—in reference to this report, that we settle one thing at a time. I believe the question now before the house is the amendment offered by the gentleman from Kanawha to strike out the words "or other corporations." I may say, however, in reference to a remark dropped by the gentleman from Wood regarding our future, it strikes me as highly probable that the Constitution this Convention may adopt and recommend will be approved by our legislature, whatever Congress may do with it afterwards. But the proposition now is to strike out these words. I wish to say to the gentleman from Kanawha that the committee had no design whatever in settling the question at all whether this State should or should not embark in internal improvements. We had no intention or expectation that the insertion of this clause here would or would not necessarily raise that question in the Convention. We did not design to indicate any opinion or wish on that subject, but simply to provide that property the State may now or hereafter own shall be devoted to the work of education. And I yet fail to see how the insertion of that clause can operate unfavorably to internal improvements. It may be for my own want of perception. If, for example, the State of Virginia lends its pledge of credit to the construction of a railroad which pays the State no revenues at all from year to year, of course it will have no effect at all on the interests of education; does not affect the question whether the State shall embark in these enterprises or not; but if that railroad does become a paying institution, those revenues accrue to the benefit of the common school system throughout the State. Well, now the question is whether any other direction the people at large would prefer that the proceeds of their money would take, would benefit them as much as education. Is it not just as likely that the people would give their consent to the State embarking in works of internal improvement when it was stipulated the proceeds should go for general education as though it was provided in the Constitution they should go to some other object? That it seems to me is the only question; and that does not affect the other question whether it is wise for the State to make its investments in works of internal improvements. It is only a question of how the profits of such investments, if made, shall be directed. I repeat the committee had no design at all to touch the question of state policy regarding such works. I do not think it was even hinted at in the committee. The clause does not commit the State either for or against internal improvements. But

that it would prejudice the interests of internal improvements for the Constitution to appropriate the proceeds of the net revenues paid to the State to the purposes of education, I fail to see. Now that to my mind is just the whole thing.

MR. BROWN of Kanawha. I think I can show him in half a minute. I will suppose this gentleman to be an enemy to the common school system and the question is put to him the State is about to embark five millions in the construction of some railroad which he is satisfied will be a profitable one in the improvement of the State but will not immediately return a revenue of ten per cent on the money borrowed at six per cent to make it. He is an enemy of the common school system. Would he vote for such a scheme? No. Because he would be raising, inaugurating, a liability to make a railroad, the revenues of which when made were to go into the common school system, and he was opposed to it. You would just immediately make enemies to giving the earnings of the railroad system to your school system. Add the two, they might defeat the measure.

MR. BATTELLE. My argument proceeds on the supposition that there is no interest in the State the benefits of which would be so wide-spread and pervasive as those of general education.

MR. VAN WINKLE. The adoption of the motion made by the gentleman from Kanawha defeats my motion, if I understand it.

THE PRESIDENT. No, he divides the question.

MR. BROWN of Kanawha. I desire to say that if the amendment I offer is not carried, I will be compelled to vote for the amendment of the gentleman from Wood.

THE PRESIDENT. The gentleman from Kanawha does not comprehend the effect of the motion made by the gentleman from Wood. If the amendment of the gentleman from Kanawha fails and the proposition of the gentleman from Wood prevails, he effects both purposes.

MR. BROWN of Kanawha. Yes, sir, I understand that; but I am content that the words shall stand if I strike out what I propose; but if I cannot get them stricken out, then I am driven to the necessity of striking all out, so that I desire the vote taken first on my amendment.

The question was taken on Mr. Brown's motion to strike out "or other corporations" and it was rejected.

The question recurred on the motion of Mr. Van Winkle, to strike out the clause.

MR. HAGAR. I certainly feel much interested in the cause of education. I represent counties that certainly need some system of free schools established in their midst. I well recollect when talking to my people on the subject of a new State that one of their great hopes was that we would get a good free school system. My notion is that the common people are the backbone of the nation. If so, education might be termed the sinews. Perhaps as far as natural ability is concerned we have a common share of that down where I live. Like a rich soil uncultivated, it produces nothing profitable—very little at least. If we can get a school system that will cultivate the natural abilities or mother wit there, I feel free to say I believe we will come up some day in the future; that the people will not have to be represented in the legislature and convention, if we should have another from that part of the State by me who have never had perhaps a day or week's schooling in their lives. I have been traveling through that country for the last seven or eight years and where I have entered family circles saw intelligent boys and girls 14 to 15 years old whose countenances testified to good natural ability not able to know their alphabet; and some of the parents of these children did not know their letters—many of the men who could not write their names. I certainly, if I feel interested in any subject that has come before this Convention, am interested in the subject of education. It is true it is a little better now than when I was growing up; but while I have contrasted the privileges and advantages of the people that have been raised up here and the children that are growing up here, compared with the children growing up there, I certainly feel greatly interested in this subject. I hope the motion of the gentleman from Wood may not pass; and I think we have got it about as good as we can get it. I had no serious objection to the amendment of the gentleman from Kanawha; but as I did give my vote to incorporate in the report, I could not consistently vote to strike it out; I do want some permanent fund, some principle laid down by which we may as soon as possible secure a fund that our free schools may get into operation. The people there complain about their taxes—poor men, common laborers, men with a hundred acres or two of land, a little property—about being

burdened with taxes; but let them know that there is a free-school system and that their children will be educated and I tell you they will begin to come up with money to pay their taxes with the hope that their children will be educated. It can do me no good as an individual; but while I have seen the privileges enjoyed by the rising generation here, I would rather than all I am worth that my family could have enjoyed the privilege the people do here. Schools are far between there. There are men and women there who never saw a school house. I know we will strain a point, using my homely phrase, in order to secure funds whenever we may have started a fund to carry out the object of this free school system. I hope the amendment will fail and then the sentence will be maintained.

MR. STEVENSON of Wood. I said before we took a recess that I was in favor of passing by the consideration of this sentence for the present and I believe so now; that there would be propriety in that, because as we go on in the discussion of this matter of raising revenues to support the schools probably the matter will become clearer; and if we should happen to get on to the report of the committee on taxation and discuss this whole matter of the State becoming a joint stockholder in public improvements or lending her credit for purposes of that kind, we may get some additional light on the subject; and I feel now, sir, because there are several matters here that it seems to me have not been touched, one that I intended to later allude to, but if the question is pressed now and if it is in order, I believe a motion to postpone has precedence, I will make the motion to pass by this sentence for the present.

MR. SINSEL. I do hope the Convention, as they have argued and discussed it three or four hours will dispose of it. I do not think the friends of it ought to be much disturbed whichever way it goes. It does not affect their report in the main. I am willing to strike it out or retain it, and then I am perfectly willing to adopt the balance of this report without crossing a "t" or dotting an "i" or marking a period. Let us dispose of this point now.

MR. LAMB. Mr. President, I trust no one will doubt that I am in favor of a proper system of education. I know the advantages and necessities of it; and if we expect to preserve our republican system we must educate all the people; but I say to the friends of the measure—the committee that have reported this

measure here—that I am unwilling that West Virginia should found her system of public education on the abolition of the public faith. That is most certainly done by this clause. I am unwilling that that should go abroad to our sister states, unwilling to so depart in a matter of that kind. I am willing, for one, to pay all necessary taxes in regard to a measure of this kind; I am willing our people should be taxed, but I am not willing to put my hand into another man's pocket and draw from thence the funds on which this system is to be founded. These stocks belong to the public creditor. They have been pledged by the most sacred of all pledges, your Constitution. You have held that out in your Constitution to induce men to take your stocks and that these funds should never be disposed of without being devoted to the payment of the public debt. Now we are asked to take property which legitimately belongs to others and make it the foundation of our school system. I should regret exceedingly, much as I appreciate the advantages of a proper system of schools, that this report does not lay the right foundation for it in West Virginia.

MR. PAXTON. My colleague has anticipated what I was about to say on this subject, and I need only make the single additional remark that I do not see how the striking out of this clause will embarrass the free-school system as appears to be supposed by some gentlemen who have addressed the Convention. It appears to be only a question of diverting from its proper and appropriate use, these particular funds, if we divert this money and appropriate it for one purpose we would only have to levy an additional tax to pay for the other purpose. On the other hand if we apply it to its legitimate purpose, why then we levy a tax for school purposes. The amount of taxes to be assessed will be the same in either case. I cannot see, therefore, that striking this out would really affect the question of taxation in any way. This is specifically pledged in our present constitution. If we divert it from that purpose, we shall have to levy a tax for the payment of that interest. If we retain it, we levy a tax for school purposes.

MR. STEVENSON of Wood. I desire just to say a few words now to show how differently gentlemen may view this subject. I suppose it is a dullness of apprehension on my part, but gentlemen have discussed this clause here, you will notice, as if it related only to the stock which the state has in public improvements or banks. What state? Why the State of old Virginia, not the State of West Virginia. She is making a provision here that is

to apply, as I understand it, not to the stocks of the old State of Virginia now in the Northwestern Bank or in the James River Canal, or anything else unless by some arrangement with the companies the State of West Virginia raised bonds to get hold of them. We are making a provision here to apply to the stock which the State of West Virginia shall or may own in public improvements, corporations or in banks. Now, there is a distinction, whether without a difference or not, I am not certain, but it appears so to me. Let me illustrate this if I can. If this is a wholesome provision in itself, leaving out of view the question of the old State of Virginia, or, if you please, the reorganized State, holding stocks in certain banks and improvements is it not necessary to preserve this feature if it is a good one in itself so as to apply twenty years from this time if we should have a new constitution at that time to the investments the State may make under the Constitution we are now making to these improvements? These are distinct and separate questions it seems to me altogether. So far as this provision could be made to apply to the stock on hand at present, I think it might be well enough probably to so modify it as to make it inapplicable to them. That, it seems to me, would meet the objections urged here against this provision. But unless there is something radically wrong in the provision itself, it seems to me only proper it should be made to apply to the stock which the State of West Virginia shall have in such banks or public improvements. Now if there is not a difference there, then I confess I am not capable of understanding the question. Now, for instance this constitutional provision which was read here that these stocks are pledged to the redemption of the public debt. Well, now, what does that apply to? That does not apply to the stock which the State of West Virginia may take in any bank, railroad, bridge or turnpike. It is not possible it can do so.

MR. PAXTON. Suppose in a settlement with the old State of Virginia we should get the stocks owned by the state, would not this provision in the Constitution apply to these stocks?

MR. STEVENSON. Yes; I said so a moment ago; and I said if it was modified in that particular it would meet the objection that is urged against the provision by those who want to strike it out. But that is not an objection to the provision itself; and if it is right, it ought to be kept in there because if we struck it out we might wish afterwards to get the investments the State may make in these improvements. There is the difficulty in my mind; hence

I wanted to pass the matter by until we discuss the whole subject, when we may be able to reconcile these conflicting views and interests and probably modify this provision so as to meet the views of all the gentlemen; because I am satisfied every man who has spoken on this subject is desirous of getting a proper fund to support a system of free schools. Now, I say if you strike that out absolutely you deprive the State, at least until there is an amendment or another constitution, from getting any revenue from these sources.

MR. BATTELLE. I join my colleague on the committee in the request of this morning that this sentence for the present be passed by, and I believe it is a courtesy that has been extended to almost every report that has come in, and I shall ask it as a favor to the members of the committee. For one, I will say before I sit down, by permission of the gentleman from Marion, that if I know myself I not only do not wish but will not consent to the incorporation of any principle in this, or in any other, report that does injustice to any plighted faith in this business; but I wish to have some time for reflection in connection with that before we act. I ask the favor of the Convention to pass this by for the present.

MR. HALL of Marion. I trust the Convention will not pass by; for really such has been the manner of disposing of business that whenever we come to a place where we squabble we pass by, and it will throw us into confusion. This matter has been discussed and one point at least must be apparent in my view, and that one is sufficient to govern the action of this Convention on this motion to strike out. Now, whether we suppose that this provision will have reference only to the interest creating in the State of West Virginia or not, there can be no doubt. But when we incorporate this into our Constitution, it goes forth to the world and the construction placed upon it will be a barrier, a rock in the water that will prevent us reaching a state and, therefore, your proposed system of education. Whenever by this adjustment we cannot go everywhere and tell the people we intend to so adjust our matters with the old state that we will not have any interest in anything derived from these companies and they will regard us as having appropriated all our means and facilities to pay the debt and that we are not likely to act in good faith, it will be in our way when we apply to Congress for admission. It must inevitably do so; and I see nothing if this is stricken out in the

way. Whenever we find ourselves in a condition with our affairs to make it judicious, I see nothing to prevent the legislature from making provisions, adding, appropriating, giving direction to this or any other fund. But, as remarked by the gentleman from Ohio and a number of others, there can be no doubt of this fact that the whole world so far as they know anything about this regard themselves as holding a lien on this very thing, and we know everybody would expect that when we had made an adjustment with the old state, we would at least have control of so many of these corporations as are situated within the territory of our proposed state. Then, sir, you have appropriated this in violation of a constitutional provision. I trust we will act on this matter and that we will not by retaining this clause anticipate legislative action in the future. I for one am exceedingly anxious that we shall so frame our Constitution as to steer clear of every corner and get a new state, and this certainly will be a barrier. It will have the appearance of not acting in good faith. Those who are interested in the bonds of the State of Virginia will believe that we propose one thing and intend another when we say we will pay our reasonable proportion of the debt. I trust we will strike out now, and not pass it over.

The motion to pass by was put and it was rejected.

MR. LAMB. Lest my vote might seem discourteous to my colleague, I wish to make an explanation. If this clause should be stricken out, it will not prevent at any stage the offering of an amendment which will make the provision relate exclusively to stocks which will not be affected by this pledge of the public faith; so the gentleman's object can be attained as well, I suppose, in one way as the other.

The motion of Mr. Van Winkle's, to strike out the clause, was then taken, and it was agreed to.

The Secretary reported the next clause: "any sums due this State from any other state on account of educational purposes."

MR. BATTELLE. I suppose the Convention all understand what that means. I do not know but one state from which any such sums are to come. The committee thought it best to use general language rather than specific. If in the final adjustment of matters between us and the old state there ought to be a large share of the literary fund belonging to this State on any just principle of

settlement. I suppose no one in the Convention will object to the fact of that being appropriated to the object for which it was raised. I suppose all gentlemen will agree that all sorts of faith will require that that fund, if it comes to us, should be devoted to the use for which it was raised when the state was all together.

MR. PARKER. I agree with the gentleman. I understand that the amount of the literary fund which I suppose this has reference to is about two millions and a half. There ought to be something like five hundred thousand proportion coming to the new State. The way it stands here, it struck me it was not sufficiently clear. The funds are doubtless now gone in the rebellion. Suppose in the adjustment the old state will account to the new State, but these funds will be gone. Well, now, what I suppose the committee meant, what I believe will meet the views of the Convention generally will be that although the literary fund is really gone, the general school fund of our State shall stand credited with the amount, with our just proportion of that fund, on the books of the new State. That, it seems to me, would be right, because we do not receive the money of the new State; but it comes in and the new State receives the benefit in liquidating the debt, settling the account, and it is absorbed in that settlement. Well, as that was purely a literary fund which the old mother has devoted to literary purposes, purposes of education, why, of course, we should want to credit our corresponding fund with the fair proportion which comes to us, for the same laudable purpose, and not use it to pay our debts. I had drawn up an amendment which it struck me would express the meaning more specifically, which I would now offer.

The Secretary reported:

"That just proportion of the literary fund of Virginia which this State shall be entitled to on settlement with that state."

THE PRESIDENT. The Chair would call the attention of the gentleman from Cabell to the language "any sums due," not what we may receive but what was actually due us, would be appropriated.

The question is on the adoption of the amendment.

MR. BATTELLE. It seems to me, Mr. President, that the provision as it stands meets the case. The report says "any sums

due this State on account of educational purposes." No difference whether literary fund or school fund or what it is. The fact is that there may be money within the bounds of this new State belonging to one or the other of these funds. We have no money now that belongs to the State of Virginia. I fail to see the particular point to be gained by the amendment of the gentleman from Cabell more than what is here.

MR. PARKER. I will require a moment to indicate. I suppose being "due," it would, as it stands, be credited to the school fund.

MR. BATTELLE. Yes, sir.

MR. PARKER. I would withdraw if it is sufficiently clear. It struck my mind it might admit of some question. I will withdraw it.

The question was taken and the clause adopted, and the Secretary reported next the clause:

"The proceeds of the estates of all deceased persons that may have died without leaving will or heir."

MR. BROWN of Kanawha. I move to amend that clause by striking out the whole and insert: "The proceeds of all estates which may escheat to the State." Under the law of Virginia when persons die in cases precisely stated in this clause, their estates escheat to the state, become the property of the state. I understand the object is to transfer that to the school fund. By the law of escheat, not only those who die without heir or will but also all foreigners, who are prohibited from holding lands within the state, dying without the fee their lands escheat to the state and become public property and should also be transferred in the same condition. No foreigner can hold land in Virginia. It is one of the self-guaranties of every state to prohibit it, and it is only allowed in some partial instances. I do not know whether it was allowed in this state in the case of Lafayette. I believe there was such a proposition but he was allowed lands in the West. If it were otherwise, the real estate of a state might pass into the hands of foreigners and the people of the state be mere tenants of foreign free-holders. So my proposition is much broader.

MR. BATTELLE. I understand the gentleman's amendment to be more comprehensive.

MR. BROWN of Kanawha. And another advantage I wish to urge is that this describes a new distinction but that which is old and well defined: escheat is a mode prescribed by law to vest in the state all the property that belongs to persons who die either without heir or will and foreigners whose children cannot inherit in the state, and it will follow in the same course with persons convicted of treason.

THE PRESIDENT. And murder.

MR. BROWN of Kanawha. No, sir; not in cases of murder.

THE PRESIDENT. Well, but where the murderer runs off and will not stand trial.

MR. BROWN of Kanawha. Yes, there might be a case. But the Constitution of the United States provides that treason against the United States shall not work corruption of blood; but the State of Virginia and none of the states have ever had a provision that I know of, and consequently treason against the state would and the heir never inherit unless there is some provision of the legislature to grant an amnesty. And in such cases the object would be to transfer the title of that property to the school fund; and so, as described here, "the proceeds that may escheat to the state" covers all of them.

MR. BATTELLE. Without opportunity to consult the committee, I accept the amendment.

MR. SOPER. I am apprehensive, sir, that the amendment is too broad. I believe it will be found that there are a great many individuals living now among us that own lands who are aliens; and if a question should arise as to their titles an application would be made to the legislature and the interest of the State would be released to the heirs at law. Now, we ought not to cut off individuals of that kind, sir. I have known it in every place where I have lived and I have no doubt it will be so in Virginia, that there are foreigners here by birth who in Virginia become aliens and who are in possession of lands and probably hold deeds for them. I have known instances of that kind in Virginia and I know the time may come when this land will be declared to be forfeited unless the legislative power comes in and grants an amnesty, which always has been done and I suppose will be done hereafter. I apprehend we had better retain the provision as it is.

MR. BROWN of Kanawha. The gentleman does not understand the amendment. He supposes. I suppose he is fully aware of the law of Virginia that no alien can hold land in Virginia; that is he cannot transmit inheritance. An alien may hold land until a proceeding by the escheater takes it away from him; but by law he has no right to hold it. A foreigner has a right to hold land and his children will inherit it without the escheater ascertains these facts, and the judgment of the court, from those facts, will be; that is true; the land escheats to the State, and it becomes vested by proceeding in the State. It is nothing more than a mode by which you attain the end. The State forfeits land for non-payment of taxes; and they will declare the forfeiture; but until the land by forfeiture becomes vested in the State this fund is not to have any benefit in it. The practice is that after the time the titles vest in the State, she may release her lien on the land. The owner may discharge the taxes and may go free. So it may permit the foreigner to come in and become naturalized but if he has the determination to remain a foreigner and retain allegiance to another state he cannot retain allegiance in Virginia, and his rights are about to be taken from him—and ought to be taken from him—because he is one who has no allegiance and whom you have no right to call on in the event of hostilities. I suppose we are not going to legislate here for foreigners to the disadvantage of our own citizens. Where is there a state in the Union that permits a foreigner to hold land who does not acknowledge allegiance to the state? There is no country in the world that does it. They don't do it in England, and it was only by special legislation they were allowed to hold goods and chattels for purposes of trade; but real estate never was allowed to be held by foreigners only in special cases and for special purposes. Then this land must be forfeited.

MR. VAN WINKLE. Does the gentleman's amendment permit the release by the legislature?

MR. BROWN of Kanawha. Not after it has become vested in the state by the forfeiture, and until that proceeding, is fully done, the state could decline taking it.

MR. SMITH. I would suggest "and proceeds of all escheated lands."

MR. VAN WINKLE. I would suggest to the mover of the amendment that it would better it to say "proceeds of all escheated estates not released by the legislature," or do you mean that they shall

forbear to institute proceedings? Whether that had not better go with it, I approve of the amendment decidedly.

MR. BROWN of Kanawha. After the land has been escheated and vested in the state and judgment of the court has been rendered, the property sold and the money placed in the treasury, then I understand it will become a literary fund and pass beyond the power of the state to give it away again. Besides, it is not the same thing. After the money goes into the treasury of the state, it is wholly immaterial whether she takes out the identical dollars or some other dollars deposited there by an actual transfer and the proceeding had which makes the transfer, this section could never operate on it, for up to that time she may choose not to act or release him from the circumstances that make the forfeiture complete. Now, a man who refuses to pay his taxes, she does not forfeit his land for the first year, lets it run on five years, and then she gives him two years to redeem it again, and she may extend the time when the two years is out. But when she does that and it is converted into money and the purchaser has got a complete title, the money in the treasury belongs to the state. Then that is determined how much goes to the literary fund. All these forfeited lands in the law of Virginia go to the present literary fund of the state after paying the expenses and disposition of the property, so that a new person becomes owner of the property, the original forfeiture is cut off and the money goes into the treasury and from that into the literary fund.

MR. VAN WINKLE. I am satisfied with the explanation and will vote for the amendment.

MR. SOPER. Take the case of a foreigner who has acquired property and dies before he has time under our laws to become naturalized, his property would be escheated to the state unless released by the legislature. I think the amendment is too broad.

MR. BROWN of Kanawha. I will alter the phraseology and add after "heir" the words "and all escheated lands."

MR. SOPER. Very well, sir; that may answer the purpose.

MR. BATTELLE. No objections, sir.

Mr. Brown's amendment as modified was adopted and the amended clause agreed to.

The clause next succeeding was read by the Secretary:

"The proceeds of any taxes that are now or that may hereafter be levied on the property or revenues of any corporation."

MR. BROWN of Kanawha. I move to strike out this clause. I do not think it is proper to be carried into this Constitution. I think when we consider what is the effect of it, it will be manifest. A large portion of the lands of the State are held by corporations, your mining companies, your manufacturing companies. Very few manufacturing establishments in this State that are not corporations. In our country we have mining companies, oil companies and some places where there are lumber companies and salt companies. Some of the largest properties and incorporations in Kanawha county are cannel coal companies who have immense real estates and have erected large oil factories on it which are corporations. The taxes on all these may amount to millions. Their lands are taxed; their personal property is taxed and everything else is taxed. Now, why take all this and appropriate it exclusively to the school fund? Now this is to select the largest tax payers and take the entire taxes of these people and appropriate it to the school fund; and before you are aware of it, you will have all the revenues of your State in this one fund. You cannot get them out; and I think the gentlemen in placing this have not considered duly the limits to which they will go. I am confident some of the largest tax payers in Kanawha would be included in this clause and the whole revenues of their land and estate would go to the school fund. Neither would they go to the county treasury, because by this provision the "proceeds of any taxes that are now or may hereafter be levied on the property of any corporation" are disposed of here.

MR. SMITH. The moment I cast my eye on that, I agreed with my friend from Kanawha that that clause would perhaps cover half the taxable property of Kanawha county. There is one company there that is worth not certainly less than one hundred thousand dollars—an oil company. At forty cents, that would be $400 on them. There are two large companies on Paint Creek whose property has been paying something like $400. There is the White Sulphur Springs, a corporation; and I imagine their taxes will amount to a thousand dollars. It is estimated at $625,000. It was sold for that. There is the Red Sweet and the Old Sweet Sulphur Springs. They are corporated bodies. There is the Salt Sulphur; I don't know whether it is incorporated. The Red Sulphur is, and the Blue Sulphur, and all those springs in Greenbrier,

upon which I suppose the taxes are about $3,000. Well, I imagine in the county of Mason, there is Mason City incorporations; there is the West Columbia, a large incorporation, and Hartford City, another large corporation; there is a fourth I know of besides innumerable small ones.

I have no unfriendly feelings towards education. I have always been maintaining it; but I don't want to give all the taxes of the country to it; nothing left for the support of the government. I am sure the draughtsman of this could not have considered the magnitude of the interests he covered by it. As the gentleman from Kanawha has said, these corporations are forming rapidly, there are four or five or six or seven oil companies and it is proposed to incorporate the entire Kanawha Salt Works; and if so, why that would make a tax of $2,000. I believe that is in contemplation now if not in progress. And there are innumerable companies for mining in that county. I am only speaking of those I know. I think my friend (indicating Mr. Parker) was the representative of a large company in Cabell but he says they have not been incorporated, but it will very shortly be, with a property estimated at $800,000. Well, there is a company incorporated in Putnam that have recently paid $625,000 for the land they acquired. And there is Peytonia and Boone. Very large interests incorporated at Smith Rapids; one at Briar Creek and two or three at Peytonia, and I do not know how many others. Coal River is alive with incorporations; so is Elk River. It would be a large portion of the revenues of the State; but I think, while we are making provision for the schools, we ought to leave a dollar or two for the management of the government. I think it is too exclusive in its operations. I shall vote cheerfully for striking it out; at the same time declaring my hearty approval of any measures that may be intended to extend the privileges of education. But I think that is carrying the matter a little too far.

MR. BATTELLE. I propose an amendment in the 11th line striking out "property or" and in the 10th line striking out "are now, or that", and in the 11th line also "hereafter"; so that the clause will read: "The proceeds of any taxes that may be levied on the revenues of any corporation."

MR. SMITH. I do not exactly understand the amendment.

MR. BATTELLE. The effect is merely to strike out what would be superfluous so that it would read: "The proceeds of any taxes that may be levied on the revenues of any corporation."

MR. VAN WINKLE. If the gentleman from Kanawha had not anticipated me I should have made this motion to strike out, on the general ground that these original sources of revenue ought not to be appropriated for the school fund. If money is to be appropriated for that fund by taxation, let it be raised by taxes laid for the purpose. There is no provision for a state tax, unless I am mistaken; and since I have heard the remarks of the gentleman from Logan, I am afraid that apart from the principle that is involved in it we would be robbing the revenue of a portion that we cannot spare. I think the true idea in reference to this school fund is to take these fines, and trusts, escheats and forfeitures and penalties and fees and give them to the school fund, and that the money that is necessary to be raised by taxation for school purposes be raised as this report proposes to do it in the townships or counties, so that it may be better proportioned to the wants of each county. The idea which is embodied in the report I take it is this: That there shall gradually accumulate a fund from these sources; fees, waifs, escheats, forfeitures and fines, and that the annual increase only shall be distributed for school purposes. The fund will thus go on increasing; and if it increases rapidly by so much will the taxation in the townships be relieved until the fund gets sufficient to maintain the schools—as I believe it does in the State of Connecticut. The annual increase only is to be applied; which leaves the inference that the balance of the money has got to be raised by taxation in places where it is needed. As to the features of that taxation, I shall have something to say when it comes up. But I think it is wrong in principle and it would be more wrong and very inconvenient in practice according to what the gentleman from Logan has told us if we appropriate these taxes to the school fund. As I have observed before, everything in the future is dark. We do not know what our revenues are to be from any source. How are taxes of this year, for instance, going to be paid? We must not strip ourselves of revenues applicable to ordinary purposes. I hope therefore the clause will be stricken out.

MR. BATTELLE. I do not see the application of the gentleman's remarks to the proposition now before the Convention. It does not propose that the revenues of any corporation shall be taxed; it does not settle that question at all but leaves it to the legislature. The legislature may see proper never to impose a tax on the revenues of a single company; but it does provide that should

the legislature see proper to levy a tax on corporate revenues, such tax would go to the school fund.

MR. VAN WINKLE. I wanted to state what I intended to, they cannot under our system of taxation lay a tax on both property and revenues, under the Constitution of the United States. The late Attorney General, Mr. Tucker, has, in a long and elaborate opinion, given his opinion that the Baltimore & Ohio Company is not taxable at all. An arrangement was entered into between this attorney general and several railroads in the state from which there is now pending in the court of appeals a suit involving the question of the right to tax these railroads on both revenues and property. One case is being tried in that court; and by consent of the attorney general, the auditor and the rest, the road with which I am connected, are all waiting the decision of that case. That was the state of things when this trouble came upon us, and of course since no progress has been made. Now, it is wrong, of course, to tax both property and revenues.

MR. BATTELLE. To all which I reply that if there is any tax laid and any revenue derived it can do no possible harm to anybody. But it may be the case that hereafter in granting a charter, for instance, for the construction of a railroad, it may be provided that a certain bonus or tax shall be paid to the State from the travel and freight on that road. The object of the provision, whether right or wrong—it strikes me as being right—is that in case the legislature should ever lay any tax on such revenues, it would accrue to the benefit of the school fund. But what I wish to say is this, that this provision here does not at all settle the question of whether there is to be any tax of this sort levied. It does not affect, or settle or touch that question; but merely does provide that in case the thing be done—it is a future contingency altogether, which this does not attempt to settle or even suggest —but that in case it shall be done and there shall be a revenue accruing to the State from a tax on revenues of a road or from any corporation it shall go to the benefit of the school fund.

MR. SMITH. I merely suggest to the gentleman from Ohio that there is another clause in this Constitution that will be in conflict with these taxes. You tax this once as property; and then you tax it again on its revenue; which is another tax upon it, and it would make it unequal to tax corporation property more than other property.

MR. BATTELLE. It seems to me that that would be a line of argument to address to the legislature when they come to the question of imposing the tax.

MR. SMITH. But we ought not to give them power whilst we are prohibiting the legislature to follow an impulse that might be created against the corporation and they would seize the opportunity of taxing their revenue; and that is one of the things that ought to be inhibited; and it is that sort of thing we ought to put in the Constitution. But as we are making a code, I wanted to make that code as perfect as it could be made. I do not think there ought to be anything in the Constitution but that which is an inhibition to the legislature, and leave to them all that we are willing to trust them with. They have the power to do all this without this proceeding we are adopting here; but I do not want to give the legislature power to lay double taxes on a corporation. There, prejudices may grow up against them for some cause or other that may be temporary in its character but which while it does exist will bear heavily on them; and I don't want to give the legislature power to do so. We have said taxes shall be *ad valorem,* leave them *ad valorem.* I don't think taxations ought to be taxed any more. But here it is singling our corporations and giving a double tax on them and not a double tax on any thing else. Just come out and say the legislature may levy double tax; but to say it shall be unequal is unjust. I object to it on that ground. The legislature grants powers to a corporation and limits their rates. They are to be taxed in a given way. The arrangement is a contract. If afterwards this contract is changed by the legislature, it is a violation of the contract; and a contract cannot be changed without consent of both parties to it. This was the question that arose in the case taken into the court of appeals by agreement, referred to by the gentleman from Wood.

MR. BATTELLE. If the future legislature of West Virginia should on the application of capitalists from anywhere grant a charter for a railroad from one point to another within the bounds of the new State, would the legislature have power under the general constitutions heretofore, or under that which we are likely to make here, to provide that anything in the shape of a bonus, any percentage on travel, for example, or on freights, should go to the State? Would the legislature have that power?

MR. SMITH. Anything that will not interfere with *ad valorem* taxation would be constitutional; but any taxation that would make

the tax unequal would be violatory of that principle that the tax should be according to value.

MR. BATTELLE. The gentleman does not understand me. Suppose a company of capitalists from New York, Philadelphia or Baltimore, or from any other point, should desire to invest their money in that way by building a railroad say from Parkersburg to Charleston. The legislature grants a charter to that road with this condition, that a certain percentage on the travel a certain percentage on the freight shall accrue to the treasury of the State, would the legislature be competent to make that condition?

MR. SMITH. Yes, sir; it is contract. The legislature can make a contract as well as any one else; and if the companies choose to make a contract of this sort that will bind them to a larger amount, then they are really under the Constitution bound.

MR. BATTELLE. There is only one other question: What would be the proper technical name of that amount of revenue paid by the company to the treasury of the State—taxes, or bonus?

MR. SMITH. They would charge a bonus, as benefits, pay a bonus for charter privileges. That is a bonus; and I believe is decided not to be within the purview of the Constitution which says it should be *ad valorem.*

MR. VAN WINKLE. A question I would like to ask is, whether this bonus system has been repudiated wherever it has been tried, as leading to corruption of every kind?

MR. SMITH. Yes, sir. It is not a just mode of legislation. They come before the legislature and ask for a charter and they will impose improper terms on them, which they will submit to in their anxiety to get it. It is a bad system of legislation, and one not to be encouraged, because the legislature will take advantage of a man's necessities to force a hard contract on him. But whatever a man contracts to do willingly he is bound by, unless it is against morals. No contract that is against good morals or the policy of the government is a valid contract; but any that is not in contemplation of law against good morals or against public policy is a valid contract although it is a hard one. It takes it outside of the Constitution, as I understand it. But I do not think there ought to be any winking at the right to tax it as property *ad valorem.*

MR. STEVENSON of Wood. There is one thing that seems to be overlooked by the gentlemen who are opposed to this amendment as offered by the gentleman from Ohio; and that is this: that the bonuses, as they are called sometimes in some other cases called a tonnage tax, sometimes tax on tonnage, and sometimes tax on passengers of railways, and tax upon bank charters, levied in different ways according to agreement made between the party which grants the charter and the party which receives its—and that point which it seems to me they have overlooked is this: that these corporations receiving charters for *special* privileges—now there's the point. What do they pay the bonus for? What did the great Pennsylvania road pay? Hundreds of thousands of dollars every year ever since its incorporation, on every pound of freight it carried over its road. Why are these roads through Virginia taxed so much on their passengers and so much on their freight? Why is a bank taxed? Why is it made to pay a bonus? The reason is simply this: that it has special privileges, authorized to do certain things that people who own other kinds of property and engaged in other business have not a right to do. Now, I say it is right that where corporations, either railroads or banks, or any other corporations, receive special privileges over and above other persons and other parties and other property, that they ought to be made to pay for it. And that is the very principle upon which these bonuses have been levied. If the principle is not a correct one, why, as a matter of course we should not introduce it here. But I say it is a thing adopted and practiced in all the states, I believe, of the Union. I know, however, that there is a great contest going on now, and has been for the last ten years, for the purpose of striking down this practice. Now, where does it come from? Why, sir, the people of Pennsylvania, by very decided majorities, during the whole history of that corporation, have been in favor of imposing the tonnage tax, while the corporation was making persistent efforts. They had granted special privileges to this railroad company, in consequence the company acquired immense revenues and immense power. On account of the immense amount of stock which was invested in that enterprise they have been enabled to divide the people, to a very great extent, the popular sentiment on this question; and you will find that that is the history of what is said now to be an attempt to overthrow this principle of taxing revenues and of corporations. I think the principle is not as popular as it was, but it is from the fact that within the last ten or fifteen years these great public corporations—par-

ticularly railroads—have become more powerful—probably ten times or a hundred times—than at any former period in the history of this country, and it is because of their corporate privileges that they are enabled to operate so as to crush out the operation of this principle. Now, sir, I see every reason for levying these special taxes. I do not care whether you call them tonnage taxes or taxes on passengers, or bonuses. It is the price paid that the corporation may have special privileges, that other companies, other people and capital in other business do not have. It seems to me right that if a number of men engage, for instance, in the banking business and they get the privilege of issuing a hundred thousand dollars in paper when they have but $25,000 of gold and silver, they have the privilege of operating on $75,000 of false capital. It is a special privilege that they have. A dozen members of this Convention cannot do this unless they get a special act of the legislature; and if they get a special privilege which I have not, I say they shall pay for it. Now, sir, if it is right to levy taxes of that kind on these revenues, then it seems to me the most proper place to deposit these taxes after they are collected is for the support of the school fund.

Let me say here that if we go on and strike out everything from which we can raise a fund to support schools, the school system will come out at the little end of the horn. How much revenue will you raise from these escheated lands? How much from fees or fines which are to be put into the school fund? Not enough to keep the schools going in a single county of the State, probably, for a year. Now, what other sources of revenue are to be tapped for the support of this free school system? Why, sir, the alternative is that you must tax property and tax the head. Here then comes the difficulty we have been talking about all day. People are already taxed too much. When we have apportioned this state debt and taxed them more for it and for erecting public buildings that may be necessary to commence and carry on a new State the people will be taxed for that. Now we come in to tax them again for school purposes, because we must do that unless we can raise the revenues to support this free school system from some other source. Now, sir, I want to be as liberal to corporations as possible, but I say, for one, special privileges over and above what anybody else is to have ought to be made to pay for them. And when they are made to pay, it will be, as I think it ought to be, one source from which we are to derive revenues to support this system of free schools.

MR. SMITH. The gentleman's remarks are all well enough if they were now on an act of incorporation. If an applicant was here for corporate privileges, one would say I claim the right when we give you an act of incorporation to tax your revenue for school purposes; but this is to tax any incorporation with its existing charter, and that existing charter does not authorize the taxing of these revenues. This provision if it is to be applied to corporations ought to be to corporations hereafter created by this State. Because there are corporations now existing that you cannot tax; because it is not authorized in the charter, and a charter is a contract. The legislature cannot tax that which it has agreed not to tax. Now if you are taxing a railroad on its freight or passenger traffic, or in the form of a bonus, that is a contract the State has made with the party to whom you are granting the charter of incorporation, and you may well insist on it; but here you are proposing to tax those whose charters may not allow it. That is the objection that will be made to the proposition to tax an incorporated company the charter of which will not authorize it; but if that very company was coming in to ask a renewal of its charter, the legislature might very well say "We have given you this privilege of passing through our country—these extraordinary privileges which do not belong to people generally; and in extending to you this privilege we require you to compensate the State and pay so much on tonnage, so much on passengers." Then the question is, will the incorporated party accept this incorporation on these terms? If they do, it is a bargain, and they are bound by it. But here it is nothing of that kind, but to charge a corporation now existing with a tax on revenues which may not be authorized by its charter. This reads: "The proceeds of any taxes that are now or may hereafter be levied on the property of revenues of any corporation." That is any corporation now existing or hereafter to exist; seeks to charge it contrary to the other branch of the Constitution which says it shall be *ad valorem*. And then when they come to incorporate or give the charter they will give it on such terms as the legislature choose to give it and such as the other may accept. That is a contract that may be legitimately made, because it is not in violation of morals or of the policy of the State. But we are not incorporating a company now. We are proposing to tax a company already existing, and you are not in condition to impose that sort of a contract upon them.

MR. STEVENSON of Wood. I really think there is no difference after all between the gentleman and myself. This does not make it obligatory on the legislature to tax any company. If they have not the power to do so; if that corporation has a charter exempting them, it is not in the power of the legislature to violate that charter. This provision is simply that where the legislature does have the power to impose such taxes, and see fit to exercise that power, the taxes so laid in their discretion shall go to the school fund. How would this suit the gentleman—to say "any corporation hereafter created"?

MR. SMITH. Well, now, the legislature have the power to do that when they incorporate it.

MR. STEVENSON of Wood. I know, but what they want now. We know the legislature will have that power, but when they levy the tax we want to fix it so that it shall go into the school fund, simply to give the direction to the revenue we are proposing. There is no difference if the gentleman will agree to that. We have got the thing just right: that the legislature may levy a tax on the revenue of corporations hereafter created, and it shall be appropriated for school purposes.

MR. SMITH. There is this objection to it that you take from the ordinary revenues of the country too much. You don't know how many corporations there may be. I think that can be better disposed of by the legislature. They have charge of the interests of the country, and if the people want it and think the revenues ought to be applied to the school fund, they will so apply it. But supposing hereafter, after the inauguration of the State, you levy this tax on every corporation, and diminish the income: I do not know that you would, because it would still be subject to *ad valorem* taxation, and this would be a risk they assume themselves. But I think it is throwing a difficulty in the way of incorporations, obstructions, I think, in the country like ours where associated capital is so important to its prosperity, that we ought rather to encourage than discourage. The great difficulty of developing the wealth of this country is the want of funds; it is that we have not individual capitalists that are able to start out and develop any of the great resources of the country; and we ought therefore so to direct our legislation and our action as to arouse people to call forth all the energy and power of the State to develop its resources, and I do not like to see measures taken to cripple cor-

porations, which are nothing more nor less than the associated wealth of the people of the country, who unite together their moderate resources to make a capital that will produce a good result. And I think it ought not to be discouraged. Rather, it ought to be encouraged. I do not know any country under the heaven that needs wealth for its development more than western Virginia. I do not know any country having such wealth as it has in proportion to the means of developing it. Why this whole country is a mine of wealth, and we have the people to develop it. And that is the reason why we are now poor. We have wealth in every form, but we lack capital to develop it. Will we therefore at this time when we are framing a government say in our very Constitution a thing that is calculated to alarm those who may call for incorporations which would give us the aid we need? Let us rather encourage than discourage these corporations. I have no prejudice against them. I remember the first time an act of incorporation was passed by the Legislature of Virginia; and all old Virginia was in arms, alarmed because they thought their liberties were gone. But since then Virginia has advanced very rapidly, and would have advanced more rapidly if it had not been for her own folly. In our country we have been neglecting to cultivate our own resources and would still be far in arrears but for the benefit of associated capital which in late years has come to our aid.

I think the provision is objectionable in that form, because it looks like discouragement of corporate capital. I think there is no man in this house more eager to educate the children of the country than I am that will go farther than I will. I will bear taxes upon taxes, but not seek out this subject or that subject for taxation—make this discrimination here and that there. Let us make discriminations against corporations and crush them to the earth. I am against all that sort of thing. I do not want to throw a single thing into this Constitution to discourage the association of wealth for the benefit of the country. My friend from Boone knows how much the corporations have done for the country. They have made it; and but for this rebellion that country would have gone on rapidly in improvements; and it never would have done it but for the association of that wealth there. So it has been in my own county; and I will venture to say wherever these corporations have gone with their wealth united to develop it the country has been in nine cases out of ten a successful result.

MR. HAGAR. I move we adjourn.

MR. VAN WINKLE. I had the floor, I think, sir. I want to say that if either I or the chairman of the committee misconceive this subject of a school fund very much if it is supposed this fund is to be different from like funds in other states. If there is to be accumulated in one year all these things devoted to the fund are to be anticipated, as I believe, then I have misunderstood the subject entirely and I shall vote for no such school fund. In the second place, if this great principle of *ad valorem* taxation which we contended for in 1850-1 and got apparently is to be sacrificed to the school fund, then I am against the school fund altogether. Now, sir, this talk of valuable property and all that sort of thing —what does it amount to? If you put your tax on property you can reach it in the regular way. If these corporations are so valuable that the property round them rises in value, then you get the increased taxation on them. I oppose this because I do not wish to see ordinary revenues of taxation appropriated to any special purpose. If you will make taxes as soon as the country can afford it to go into this school fund, I will go with you. But I will not go for unequal taxation. We must have *ad valorem* or equal taxation established in our Constitution. We shall be able to get along and satisfy the public. But to pick out a thing here, to single out this kind of things, to wield the power of the State for an unjust purpose, I never can consent to and never will. Now, sir, let this fund be built up gradually; give to it those things that are coming in; when you want more money raise it; and if you are going to set your schools in operation in three years, as here proposed, you will have to raise it by taxation. If it was a million of dollars, it would be but $60,000 a year to distribute among all these counties; and when will it get to be a million in any circumstances? I think the gentlemen in their eagerness—I do not allow that they exceed me in eagerness to have a good school system—are willing to overthrow the principles of government, which are equally as valuable to the people as their education or many other things.

MR. BATTELLE. The gentleman, I know, does not intend to impute that the committee designed to act dishonestly.

MR. SMITH. I did not so understand it.

MR. VAN WINKLE. The gentleman ought not to be so sensitive. I did not mean that, of course.

MR. BATTELLE. The gentleman said that in our eagerness we were willing to overthrow the principles of our government.

MR. VAN WINKLE. That is the true effect of your act.

MR. BATTELLE. I am very glad the gentleman disclaims, however—

MR. VAN WINKLE. I disclaim here, and forever, any purpose to impugn the motives of gentlemen. That is not courteous, and it is not my business. I have not done it. I am endeavoring to maintain my position and when I point out that the effects of my opponent's position is to work certain injustice it is not to be supposed that I say he meant injustice.

The Convention then adjourned.

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XL. TUESDAY, JANUARY 28, 1862.

The Convention was opened with prayer by Rev. James G. West, member of the legislature from Wetzel county.

THE PRESIDENT. When the Convention adjourned, it had under consideration the report of the Committee on Education, and the question was on the amendment offered by the gentleman from Ohio (Battelle) to the motion of the gentleman from Wood (Van Winkle) to strike out.

MR. BATTELLE. Before the gentleman from Wood, who I believe is entitled to the floor, proceeds with his remarks, I wish to suggest an amendment that will, I think, meet the requirements of the Convention. I suppose it is not strictly in order for me to offer an amendment.

THE PRESIDENT. A third amendment would not be in order.

MR. SINSEL. He can modify his amendment.

MR. BATTELLE. I may indicate it merely for the information of members. I will indicate it.

MR. STEVENSON of Wood. You might modify your present amendment.

MR. BATTELLE. If the Convention do not object. If my present amendment should prevail, it would leave the clause to read: "the proceeds of any taxes that may be levied on the revenues of any corporation." I would propose to add to that simply the words "hereafter created." It would then read "the proceeds of any taxes levied on the revenues of any corporation hereafter created."

There being no objection, Mr. Battelle's amendment was so modified.

MR. BROWN of Kanawha. I believe I offered the amendment that was amended by the gentleman from Ohio, which amendment he now modifies.

THE PRESIDENT. If that be the case, we have got the journal wrong.

THE SECRETARY. The journal says Mr. Van Winkle. I see my notes say Mr. Brown of Kanawha. Mr. Brown of Kanawha moved to strike out the whole clause, instead of Mr. Van Winkle.

The vote adopting the journal was reconsidered and the correction made.

THE CHAIR. The question is on the amendment offered by the gentleman from Ohio to the motion of the gentleman from Kanawha.

MR. STEVENSON of Wood. Mr. President, when the Convention adjourned last evening, I desired to make a few remarks in reply to some of the arguments of gentlemen who had spoken against the amendment in reply to some remarks which I had made myself before that in favor of it. As the amendment is now modified, I do not know whether there will be any serious objection to it. I suppose there will be from the indications that were given last evening. I wish to state here that it was a very difficult matter in the Committee on Education to devise proper means of raising revenues for school purposes. We found this difficulty at every step on our progress, and I believe the Convention will find the same difficulty in every step towards progress in the consideration of this report. I think, therefore, we should meet this question as we do every other in a friendly and, if possible, dispassionate, spirit. I intend to do so if I can. I sometimes speak a little warmly, probably more so than I ought. It is because I cannot help it, or because I don't try to help it as often as I should do.

Now, the difficulty met by the committee was this: that to

raise these revenues by direct taxes on persons and property would be impracticable, at least at the present time. In fact, it seems to me it would be impossible without rendering the system itself unpopular and oppressive to the taxpayer. If we get the new State into operation, we will be taxed, of course, to build courthouses, or at least its public buildings and for all the other moneys that will be necessary to put the machinery of the new State into operation at first; will be taxed to pay interest on the debt which we will owe at that time and the moneys for these purposes, it seems to me, must be raised either by loans or by direct taxation, or both. Now, in addition to this, we are to lay a tax directly on persons and property for the purpose of establishing and carrying on a system of free schools. That tax will be oppressive and it will render the school system itself unpopular with taxpayers. The committee therefore had to look for some other source of revenue besides this, and in doing this they have reported in favor of using some of these sources of revenue—some of which the Convention have agreed to, some others they have stricken out. Now, if we are to depend on what the Convention has agreed to as a source of revenue—forfeited, waste and unappropriated lands—the fines which come into the treasury, and if you please to add to these a portion of the capitation tax—we are by no means certain the Convention will give us that, for it has not yet been considered—with all these you have a very insignificant, uncertain and unreliable school fund. Now, then, the alternative left us is to find some other sources from which you can raise these school moneys, or else it seems to me the question resolves itself into this, that you must either do that or you must abandon the hope of establishing this free school system at the present time. Because even the sources which we have already agreed upon, from which we are to derive a portion of this school fund is utterly insufficient in itself to carry on the school system, or even give it a start in a single county in the State.

Well, now, if you are to resort to the principle that has been proclaimed here, that taxation should be direct on persons and property, why you run into another difficulty, you antagonize a large and influential class of men in the new State—large property holders—who will become the public enemies of this school system if the tax is levied in that way. The class I mean would be willing to bear a moderate tax; I believe they would be willing at first to bear even a high tax, if they could see that the burdens of taxation were at some future time to be shared by other interests

in the State. But if the tax goes directly on them, the great burden of the taxes, to support this free school system which we all want, then, sir, it is calculated to offend these men, who would be friends of this school system antagonized and made its enemies. So you will find difficulties to be encountered here at every step.

I say the true principle, the most correct one, whether under all circumstances or not, I am not prepared to say—but it seems to me the true principle which we must have in supporting this free school system is this one hit upon by the committee; that is, to divide, as far as possible, the responsibility of supporting this school system among the different interests of the State, to divide among them the burden of taxes which will be necessary to start the system and get it into successful operation. One of the objects of taxation which the committee have sought for here is the revenues of corporations. We are met at once with the objection that it is wrong to tax the revenues of these corporations. Why is it wrong? You say we tax their property already and why levy a special tax on the revenue? Well, I will tell you one reason. I told you yesterday evening, they have special privileges; exclusive advantages these corporations have which no individual has, that no set of individuals in the State has. They have a monopoly, probably, of some particular business, a monopoly of some great interest in the State; and this special tax is the price which they pay and ought to pay for these exclusive privileges, exclusive advantages and special interests given to them by the law which brings them into being. Is there anything wrong in that? It seems to me not. I think though if any such arrangement is entered into between them and the state they owe that tax just as fairly and justly as any other man owes a tax on the property which he has.

Again, it is said, sir, that we must tax here on the *ad valorem* principle—tax everything according to its value I suppose it means. That was the argument yesterday evening, tax all kind of property according to its value. Well, I suppose the principle is a correct one. Well, now are not the revenues of a railroad company property; the dividend of a bank, the profits declared by a manufacturing company, property? They are just as much property as the acre of land which you own or the watch which you carry in your pocket; and if that principle is the correct one, it ought to be applied to all property if you can find it. But if you cannot get these dividends as they are made by the regulations of the corporation, or these profits as they are declared, and fix the tax on them

then and there, they will slip through your fingers and you will never get them taxed at all.

A good deal was said about the importance of these corporations in developing the natural resources of this State. I agree to every word of that. I believe they are very important for that purpose, and therefore concede that they should be encouraged in this new State in every way in which it is possible to encourage them as long as you do not infringe on the rights of any other interest. But, sir, I hold that there are other interests to be protected and that they are just as important to the growth and prosperity of this new State as corporations are; and we must be very careful here that we do not discriminate in favor of corporations in such way as to inflict injury on private enterprise or on the private industry of this new State. One is just as important to the development of the great natural resources of this new State as the other is. I am in favor of encouraging both; but in the burdens which are to be borne in this State, now and in the time to come, I am in favor of taxing them both. There is such a thing, sir, as corporations which may be of great public advantage under some circumstances becoming a great public nuisance under other circumstances. And here let me say that this amendment, as I understand it, does not make it obligatory on the legislature to tax corporations. This is wisely left with the legislature. It may discriminate where it sees discrimination is proper and will be profitable. There may be cases where a corporation may undertake some great public improvement which would be more for the public advantage than they profit from the corporation by taxing it. In such case, the legislature would no doubt wisely discriminate and would put no tax on its revenues nor bonus for the privilege of entering into the undertaking whatever it might be; but in such other cases as the legislature in its wisdom may find the public interests demand that a tax should be placed upon a corporation, or a tax of any kind on its revenues, wherever that is thought necessary, then I say it is highly proper. It seems to me we should say here in this Constitution that tax shall take and what particular purpose it shall be appropriated to carry out in the State. We say it shall go to the school fund. I contend that this will be an inducement itself to these corporations to carry on their particular business, whatever it may be, amongst us. If they know when they enter into this arrangement that the tax which they pay will not be squandered by the State, will not be appropriated, probably, to some rival improvement, some competing interest and that it will

be sacredly devoted to the purposes of public education, it will be a strong inducement for these corporations to submit to the tax and pay it—much stronger than if these revenues were determined in any other direction than that of education. Now, that is just as important for the development and growth of this State to have people here as it is to have corporations. The first thing you want in this new State is more people. The first, I have said more than once. We have got good people now, but not enough of them. We want an industrious people, a moral people, a people who not only have the labor of their hands but have some means, some capital, to come amongst us and give shape and value to the vast material of wealth which is to be found everywhere within the limits of this new State. Well, now, sir, you may call upon those people till Gabriel blows his trumpet unless you have a system of instruction such as will induce them to come with their families, and they will never come. As long as this government has fourteen millions of acres of land unappropriated, unsettled, fertile as any that was ever turned up by the plow share, at $1.25 an acre, with ample public lands set apart to establish and continue perpetually a system of free public education, people will not come to any state that does not afford them advantages at least in some respects like these. If we desire to fill up this new State with the class of people to which I have alluded—the only class that can make us a thrifty, enterprising and wealthy State—we must hold out inducements such as are held out in the older states of the Union, in the newer states and even in the unsettled public domain, if we expect to bring these people amongst us.

Now, upon these things I believe we all agree. The only difference that appears, it seems to me, to prevail here is in regard to how we shall establish and start this system. Still I say we must meet that problem candidly and in the best of spirit, for it will require all that and investigation to determine what the solution is to be. I have endeavored to show that you cannot effect the object by direct taxation. I think it can only be done by looking to such objects of taxation, different objects, as will distribute the burden amongst the different interests, different corporations, different people, and different kinds of property and privileges conferred by the State, to an amount that when combined will be sufficient to carry this free school system into operation. If you go on and strike out this provision here you have precluded the legislature by that act from having the power of raising a tax for that purpose, or at least you have done this much, that if a tax

should be levied upon these revenues, or upon these profits, it may be appropriated for other purposes, and not go into the school fund. Our object here is to fix a certain number of objects of taxation so that the revenues derived from taxation upon these shall be set apart exclusively for a school fund and for no other purpose whatever. If it is designed to leave this whole matter to the legislature, then we had better abandon everything here in regard to a school system and just say the legislature shall when it may be convenient or practicable adopt a system of free schools throughout this new State. Unless we intend to set apart a sufficient number of objects of taxation and of such a character as will raise a revenue sufficient to put that system upon its feet and maintain it for a certain number of months in the year in successful operation, we had better give up the attempt, and leave these gentlemen who insist that we must not touch the corporations or other sources of revenue to come forward and show us how they propose to establish and maintain such a system of free education as they all protest they are heart and soul devoted to. If they are not willing to tax any of the things that we propose to tax, let them show us what they are willing to tax.

MR. SINSEL. For one, I prefer the sentence in its present form; and looking at it in that light I shall vote against the amendment proposed by the gentleman from Ohio, and I shall also vote against striking it out. Now many of these corporations, for instance the Baltimore and Ohio Railroad, before it was constructed—it went very slow—the state derived a very small revenue from those lines. Well, the simple construction of that railroad through the territory of Virginia enhanced the value of lands along and contiguous to it and thereby increased the revenue of the state considerably outside of the improvements made by the company itself. Well, now, in the construction of one of these tunnels, for instance the tunnel in Preston county, I suppose the company expended at least a million of dollars there. Well, in valuing the property of that corporation it is valued at what it cost the company to make it, so many thousand dollars a mile. Well, on this division, according to the *ad valorem* principle of taxation, we would receive a large revenue in addition to what the state had previously received from the lands and property lying along the line of that road. Well, now this revenue is easily set apart for the benefit of the school fund; no trouble at all to keep the account. It is the taxes collected from the corporation. Well, if you carry out the principle,

other corporations may come in and buy a small piece of land and probably not pay more than a hundred dollars for it; they may establish a factory; may make buildings and all worth two or three hundred thousand dollars. Well, the state is getting just as much revenue for her lands after that as before, and this will simply be an increase of taxation which is brought in on account of that corporation. Well, now, could there be any objection to setting that revenue apart to the benefit of the school fund? The State is getting as much or more than before because of the very simple fact that that railroad will enhance the value of property all around and the State will get an increased revenue even if she gets nothing from this corporation. The corporation itself being there will increase the revenues of the State because we have to require this corporation to pay the same revenues on its property as other property is taxed; so there will be a considerable fund raised for the school fund. So I am opposed to the amendment of the gentleman from Ohio and opposed to striking it out.

MR. BROWN of Kanawha. I do not wish to exhaust my privilege in this question, still I think it is time we were beginning to enforce the rule or we will never reach an end, and hope therefore that if I do offend I shall be called to order. Still, sir, I desire to say a word in reply to the gentlemen on the other side. I understand the gentleman from Wood to give us some considerations that operated upon the committee in introducing this section. We are told that while this doctrine of *ad valorem* taxation is all right and proper that the fair and honest way is that if we determine this proposition is right we should levy a tax for the amount necessary, but that will not do in this case. We are told that if you put a tax on the people requisite to attain the end proposed the people are going to repudiate; that they will be dissatisfied with it; that they will writhe under these burdens and reject it. Now, sir, I wish to see if this is an indirect way of putting that burden on the people. I confess if it is a burden the people are going to repudiate. I prefer to go out honestly and say face to face what is the fact. If they choose to repudiate, let them do it. If this is an attempt to accomplish the same thing with the same burthen precisely but in a sort of round-the-corner way then I must repudiate it. I prefer to deal honestly and fairly with the people. I regard the people so virtuous and intelligent that they in general will see and have integrity to do it. Now, let us see what this proposition proposes. In the first place to tax the property and the

revenues of corporations. Gentlemen now abandon that proposition on this amendment; but then the proposition shows what was proposed, to tax the property and the revenues. Now is that just? Can any system of education commend itself to the popular approval that proposes to single out any class of citizens, tax their property first to the extent of its value as it taxes every other man's property and then turn in and double the taxes by taxing the revenues derived from the property, and this proposition is neither more nor less.

MR. SINSEL. Does the proposition as it now stands before the Convention propose to tax both property and the revenue from it?

MR. BROWN of Kanawha. The proposition of the gentleman from Ohio is to strike out property and lay taxes on revenues. But we will have another principle adopted in this Constitution, I imagine. If it is not, I shall fight it to the end, and then I will fight the Constitution afterwards, that taxation shall be equal and uniform in this State. If it is equal and uniform, then you have got to tax property like everybody else's; and if you include in this clause a separate provision that the legislature may tax the revenues, then you have doubled it. That is the very thing I am contending against: that this is inserting a clause here which will authorize a double taxation on this property, when the general rule is that it shall be equal and uniform. It is founded in injustice, and for what? We want to derive a revenue that the people will not bear if you tell them out plain and straightforward what it is. But gentlemen say this is not to tax it twice, it is only taxing it once. If you tax the revenue, you cannot tax the property at all. That must be an inevitable consequence, although a violation, on the other hand, of the other principle that property shall be taxed all alike. What is the result, then, to the county? Here you say you want ten thousand dollars to be raised in any county. Take Kanawha county, for the school fund. You select a dozen companies doing business and owning property in that county and ask what are their revenues and you raise the ten thousand dollars. Now what is the difference between just taxing them and taking ten thousand dollars out of the treasury and giving it to the school fund? Why, if you take out the revenues by taxing these specific companies, don't you have to raise that much more on the rest of the people to make up the same? Do you suppose the people of Kanawha are such ignoramuses that they will not know it, that they will not find out if you take a half dozen of the most important

and best-paying companies in the county and credit it to the school fund that they will not know that they have to make it up by taxing the residue of that fund on the other sources of taxation to support the State government and pay your debt? If they were such stupid creatures they would find it out when the sheriff visited them. But they will not be so easy to blind. But if it is the object of the gentleman in this manner to deceive and delude the people in getting them to endorse a proposition to raise the school fund so they would not face the music by direct taxation which all has to come out of the treasury, then you misconceive both the virtue and intelligence of the people of Virginia. I tell you gentlemen when you deal with the people of Virginia you had better deal openly and fairly and tell them the worst and they will prepare themselves to meet or reject it, for you cannot deceive or delude them. You cannot blind or fool them. They will understand this matter as thoroughly as you do and they will know when the property is taken out of one pocket and put in the other.

Now, we have a school system in Kanawha and have had for many years. We did pay an annual revenue of 25 per cent on state taxes, and our state revenue is $25,000. I doubt whether a single county in the state pays a larger school fund than Kanawha. And they have stood by it. They have faced the music.

But there is another thing. This striking out the identical feature I objected to in the 61st line. The proposition was to give the bank stock and the stocks of other corporations. That and all the 56th and 57th lines are stricken out. Now, this is the identically same thing in another way; if not identically the same, the same in effect. If it is not giving stocks to it, it is giving taxes on the revenues. I say this is a stroke to accomplish in this line just what the Convention repudiated in the 6th line. Will they now eat their own words, recede from the principle they have asserted and adopted? What is the effect of it? "All corporations" will embrace the internal improvement companies that may be created in the State. Adopt that principle and all the proceeds of taxes to be derived—because this power to tax revenues are to go into the school fund. Let us suppose the capitol of the new State should be situated in the county of Braxton, in the center of the State. Suppose the people required a railroad from Clarksburg to Charleston, to connect both places with the capitol in Braxton; that such a road is essential to the future welfare and prosperity of the State. Suppose there is not a man, or a half dozen men in the State who have the money to build it. But, say the people, it must be done;

and we combined with this State government have the power to do it and we intend it shall be done. Borrow the money and build the road and put it into operation, and we will appropriate the revenues to repay the debt. Now, if when you embark in this scheme, after you have assumed that debt, you say that every dollar as fast as the road returns it shall be transferred to the school fund, you cannot repay your debt; you lay an embargo on the people and prohibit them from putting forth their energies and improving their State, because they are to incur a debt and transfer its proceeds to a school fund they have already provided for and by the unalterable law of the State this is to go there too. It is an embargo on every system of internal improvement; it is prohibiting them from appropriating the proceeds of internal improvements to refund the debts the improvement has incurred and therefore is a complete destruction of the whole system. For this reason I oppose it; and if that doctrine is adopted, instead of your attempting to improve your State by educating your children you will have failed of that object and impoverished your people.

Well, now, gentlemen, act on that principle, that we must establish a grand school fund. Why? To enlighten our people, and to bring in other people to be enlightened. Why, sir, let them enlighten themselves. I am not legislating for them. If they see fit to come in and take "pot-luck" I shall not object. But I will never change my system of education in order to bring them here when they will not come otherwise. The gentleman from Ohio told us yesterday large numbers of our people were leaving our state and going to other states. Oh, he cannot have the free school system here and he goes elsewhere to enjoy the advantages of it! I have known a great many persons to go to the western states, but not for that purpose. I always found them lured by the cheap lands of the western prairies. I confess I could not feel kindly inclined when I heard my friend from Boone the other day describing the ignorance and degradation of the children of that noble county, named after the old pioneer hunter of the West. I have practised law in Boone since it was a county, intimately associated with a large number of that people; I know a great many of them very well; and while they have not had all the advantages of education they are not so far behind their neighbors of my county, and there are some shrewd people in Boone as anywhere else in Virginia. I never saw in the county of Boone as many degraded children, and I have traveled all over it, as I have seen in one week in the county of Ohio in Wheeling. I never yet saw there a child or girl who

could not tell me in what state she lived. I have seen that in Wheeling. Sir, all the ignorance doesn't live in Boone county or elsewhere in Virginia, and it is not where the free schools flourish altogether that all the intelligence is. My humble opinion is that take the people and children of Virginia when and where you will and compare them with whom you will they need never blush by the comparison.

I hope it will be the pleasure of the Convention to strike out this proposition, and that when we march to the principle of a free school system we will do so openly and fairly. I have no objection to the proposition. I have no objection to strike out this whole proposition and say to the legislature it shall be their duty as soon as their wisdom shall tell them to do it to establish a free school system, and leave the whole balance of the plan to them, that they may go up instructed and know properly how to act in this matter. Do that and I believe you will have accomplished more for it than attempting here in our ignorance to establish and pile up a thing which when presented to the people may be found not to suit them and result in the rejection of the Constitution which they don't either properly understand, or do not appreciate but repudiate.

MR. HAGAR. Either I or the gentleman from Kanawha, one or t'other, have misunderstood ourselves. If he understood me to indicate that the children were all natural fools in Logan and Boone, why, then the gentleman didn't understand me as the rest of the Convention did. I think I aimed to show that the people there, speaking of their natural ability, using a figurative notion, might be represented by a fertile soil that was uncultivated. I do not think that was saying they were fools naturally.

MR. BROWN of Kanawha. I did not say you did.

MR. HAGAR. I said I had entered many houses, and I think usefully, as for many years a Methodist preacher, who according to the economy of our church was in duty bound to visit the houses of members of our church and pray with them and talk to them on the subject of religion. I know my friend knows a great deal more of the people in Boone and Logan than I do. I don't want word to go back to my county that I called them all fools, in substance, at all. I said their heads were right, that is naturally so; that their mother wit perhaps would compare with any anywhere; but for want of education many of them ten or twelve or fifteen years old, didn't know a letter of the alphabet; many of their par-

ents did not know their letters and could not write their names. They have all got the natural ability to compare with any of the children of Virginia. And that is why I thought it was a pity that such a fertile soil should lie so long without being cultivated; and as the people have the notion of the cultivation of it, from the bone and sinew of the country, I am in favor of the free school system; and it liked to have leaked out from my friend from Kanawha that he didn't like to have it. It liked to have got out in the conclusion of his remarks, and I infer that that is his object in opposing all the plans of the committee.

MR. BROWN of Kanawha. On the contrary, I have advocated the free school system and fought it through and defended it in the county of Kanawha from its beginning to the end, and never flinched. Paid my taxes all the time, too.

MR. HAGAR. That is all right, sir. But, again, to further illustrate—as preachers sometimes say—if that rich and fertile soil that has been so long uncultivated was cleared, the timber cut off and the grubs dug out, the precious seed sown and properly cultivated, under the blessing of heaven, it will produce a great deal and bring forth a hundred fold or more. There is as much natural ability where I live as anywhere in the State. That is the reason why I urge strongly that some system should be adopted under which we might have a general free school system.

Now, my zeal, with others of the committee may have run us into error. I think the amendment offered by the chairman, the gentleman from Ohio only means that if there should be a tax laid by the legislature upon the revenues of corporations that it might go to this fund, to the free school system, to encourage it and support it. Not that it is proposed to require the legislature to lay such a tax. Gentlemen talk as if we were about to compel the legislature to lay the tax. We only say that if, in their discretion, they do lay it, then it is to go to the schools. But if we make a free school system by taxes laid on the people, you will find that the square tax will have its influence and as I said very likely they will vote it down. I do not think that I understood myself, and the committee understood themselves, that we wished to smuggle and cheat and place a deception on the people. We wished the Convention to say in the organic law that something should be taken from other sources besides direct taxation to assist the people in supporting the free school system. We did not intend to steal anything from the corporations nor to make the legislature do it;

but that if the legislature should see fit to make them pay something for the extra privileges they got that it might go to help establish free schools.

I am in favor of the amendment as modified. It doesn't say the legislature shall make such a contract with these companies to secure this tax; but if they do think under all the circumstances, giving them privileges above what other citizens have, that they should pay something extra as a tax, or whatever name they please to call it, that that should go into the school treasury. Why, the way the gentleman from Kanawha argues, you must claim so much off each corporation as a tax and convert it to the free school system. No such thing. The modification doesn't call for any such thing. I think not in the least. If it did that—if we were compelling the legislature to steal from these corporations to give to the poor laboring class, ignorant folks that have no education —steal from them to give to others—I think it would be wrong. I would go against it. I am as much against dishonesty as any other man. We were anxious that some other provision should be made; that we should, some way or other, from different sources, have tributaries centering in a fund that would assist the people in raising money sufficient to have a general free school throughout the State, at least three months in a year. People do need education—need it very much. I don't know it would be any special good to discourse about myself, but I am willing to say that five days and a half is all the schooling ever I had; and that was divided between two sessions six years apart (Laughter). I stand as others here. I don't know whether God has given me any more natural ability than to the average of the people where I live, but I am thankful for what little I have; and with great difficulty I have learned myself to read and write a little. I would like to see those who will fill place and many others of my age, their children who are now growing up, that when they get into the presence of the lawyers they do not feel that they are in the august presence almost of the Almighty (Laughter). In such a presence, I cannot speak as well as I could among my friends. Here is the learned, the college-bred, the educated, the wise. I feel embarrassed; I cannot tell what I know (Laughter). But one thing I know: that the free school system, established on a fair and honest platform affords advantages to every man.

MR. STUART of Doddridge. If we had a general corporation law, or, I might say, a general banking law, which authorized every-

body to enter into this business that chose to, there might be then some appropriateness in the remarks of the gentleman from Kanawha. But look how this principle would operate. Here is a company asking for special privileges—for banking privileges, for instance. They get a banking charter, with a capital, say of $100,000. As a matter of course, the capital is taxed; but, recollect, they get a privilege and have the privilege of issuing $500,000 for the $100,000 they may have in their vaults of their bank. Now there are important privileges, which enable this banking corporation to pay enormous salaries to their officers and declare large dividends. Now I see nothing improper in requiring a bonus of men who ask such enormous privileges and gains as this.

MR. BROWN of Kanawha. It is not a bonus; it is just a tax.

MR. STUART of Doddridge. Very well; we understand a tax to be but a bonus when you come to ask for a special charter. Is it anything but right? Anything but what you ought to pay? A tax on the dividends you derive from the enormous profit you receive. If you do not make this "principle" of yours more compromising and yielding it will operate unequally. It does not really make it obligatory to impose this tax or bonus; but if it should be the pleasure of the legislature to do so—entirely at their own discretion—then, sir, parties coming forward and asking these privileges and getting them, it is nothing but right and fair that the legislature should require them to pay a certain tax on their dividends, and otherwise the principle that you advocate will be violated.

MR. BATTELLE. Lest it be thought the committee have introduced a very strange novelty here in their report, I wish to call attention to a provision in the constitution of another state. I presume others could be found if I had leisure to look for them. The Constitution of Indiana, adopted in 1857, (by the book here) which has a very flourishing school system, as we all know, provides that the common school fund shall consist of the Congressional township fund and the lands belonging thereto; "a banking tax fund"; and down further they provide further sources of revenue for this fund: taxes on the property of corporations that may be assessed for common school purposes. We only propose by our amendment to tax revenues—and, by the way, we don't propose that, as has been said over and over again here, but the fact ignored by the opponents of this measure. We only propose to say that

should such a tax be imposed by the legislature, in their discretion, the product shall go to the schools. We give the power and discretion to the legislature, to be exercised or not as they deem best. The gentleman from Kanawha has been the champion—I was going to say the peculiar champion—all along, sir, during the discussions here—a very able champion—for legislative powers, legislative discretion; and I do hope, Mr. President, that his ability and zeal in that direction will not break down just now when we come to our report and propose the very thing he has been all along insisting upon, what is precisely the principle which our report contains here, committing this to the legislature, that should they impose any taxes on the revenues of any corporation hereafter to be created, waiving still further the objection that was urged last night in reference to interference with vested rights —that should such taxation be imposed we merely provide for the direction it shall take.

I wish to say a word in reference to a very grave charge that has been incidentally made in the remarks of the gentleman also: that indirectly this report deceives the people. Well, now, for the life of me—

MR. BROWN of Kanawha. I did not intend to make any such charge. I only argued that this was the purport of the argument of the gentleman from Wood as put by himself.

MR. BATTELLE. I understood the gentleman to apply that objection to the provisions contained in the first part of this report, that if we wanted a free school system why not come out and say so frankly and march square up to direct taxation to support it. Well, now, for the life of me, I can see no deception in the report. It is open, frank and fair and above board in the whole transaction; and I beg gentlemen not to be deceived or allow themselves to become prejudiced against the principles of our report by any such cry.

MR. BROWN of Kanawha. I hope the gentleman will beg the gentleman from Wood not to make that argument.

MR. BATTELLE. I am replying to the charge in reference to the provisions of this report itself. We want a free school system, and we say so frankly and there is no deception in the case. In reference to the deception the gentleman alleges this will produce on the minds of the people, and he takes his own county for illustration, I fail to see how there can be any deception because the

companies or the people of Kanawha will find in the Constitution a provision that for these unusual privileges the revenues of these corporations may be taxed by the legislature and that if so taxed the taxation as provided there shall go to this purpose. Well, how are the people of Kanawha affected by that. They may have in their bounds some corporation or corporations perhaps—and, by the way, not fifty of the citizens of that county are directly interested in these corporations. They are most usually gotten up by strangers, capitalists, from the large cities, New York, Boston, Philadelphia, Baltimore, or elsewhere, who come in here for the purpose of claiming exclusive privileges. The people of Kanawha find in the Constitution this provision and they cannot fail to understand it. I beg, again, to know what the people of Kanawha have to complain of? A provision which provides that if these corporations are taxed, those revenues shall go to the benefit of educating their children. If the gentleman expects to find arguments among the people for fighting against our Constitution, or if it shall be as free from objection from every other source as this is, I will guarantee its safe passage.

There is another remark I wish to make. Now only so far as I know, nobody here designed to deceive the people, but, in reply to another branch of the gentleman's argument, I wish to say that so far as I know, nobody has undertaken to disparage the people. I have heard not a syllable of that. The people of West Virginia want a system of free schools. Is it any disparagement of them to say that they want that system of free schools? Unless the gentleman claims that they have instinctively or intuitively the knowledge and attainments which other people have to come to by long laborious study, is it any disparagement of the people of West Virginia to say that they will not educate their children? The gentleman says the people of West Virginia are shrewd, are of vigorous mind, and I heartily agree with him. The result of my observation among them for many years is that there is, as was said by one of the other gentlemen, no people on earth with more native vigor of intellect and more native shrewdness. And one thing I will tell you: the people of West Virginia are too shrewd not to see, not to be satisfied when they demand at our hands a good and sufficient provision for free schools, they are too shrewd not to see the deception we would practice on them by turning them away with a few flatteries and blandishments instead. The gentleman tells us he would be content simply to strike out all of this, and to put in the Constitution merely a provision that the legislature

might, when they please, raise a common school system. Well, now, sir, have not the legislature of Virginia always had that power and that liberty? And what would they do more than they have always done? What would that be but a mere "tub to the whale?"

MR. BROWN of Kanawha. The gentleman did not understand me. I said a provision in the Constitution that they shall do it. There never was any such provision as that in the Constitution.

MR. BATTELLE. No, sir; I did not misunderstand the gentleman. I understood him to assert that we may grant the power to the legislature, and let it go at that. That is the very thing we wish to avoid. We have not attempted in this report to work out all the details. The committee nor any member of it professed to have the wisdom. They wished to avoid the objection raised heretofore in this Convention in reference to inserting mere legislative provisions in the Constitution, leaving that to the wisdom and discretion of the legislature and to the circumstances and emergencies that may arise. For one, let me say that I shall not be satisfied, nor do I believe the people of this State will be satisfied with anything short of the clear authority and requirement to procure and establish and provide the ways and means as far as we can do so of a system which will be adequate to the instruction of the children of our people.

The gentleman made another remark which he will pardon me for alluding to; and I do it in the kindest spirit—and perhaps I ought not to do it. He tells us—and I think this is not the first intimation of what he will do and will not do in reference to this Constitution, provided certain provisions are or are not in it. In passing, let me suggest that the best thing for us as a Convention, as I humbly conceive, is to go to work here, in the first place and make according to the dictates of our best judgment the best Constitution we know how. I beg, gentlemen, to let us attend to one thing at a time; and I am very certain the gentleman from Kanawha does not intend by a remark of that kind to hold *in terrorem* over this Convention a rod which is to sway or bias one jot or tittle the dictates of any member's judgment.

MR. BROWN of Kanawha. Such a thought never entered my mind; but the form of expression—I do not remember how I made the remark, unless indicative of my determined opposition to the proposition I was discussing.

MR. BATTELLE. I understood the gentleman to say that if

certain provisions were inserted in the Constitution, he would not only oppose it here but fight it elsewhere.

MR. BROWN of Kanawha. Yes, sir; against the *ad valorem* system; and I am satisfied he would too. I do not think there is any man here or in West Virginia who would vote for the Constitution without the *ad valorem* taxation in it.

MR. STEVENSON of Wood. A single word of explanation, and would not have offered that but the gentleman from Kanawha has asserted twice that the purport of my argument was that because the committee had singled out certain objects of taxation for school revenue, the committee designed thereby to hoodwink or deceive the people. Now, sir, I wish to say that I made no such an argument, nor I do not think the gentlemen of the Convention understood that the purport of my argument meant anything of the kind. I do say, simply, that if you make these different objects of taxation, do not tax them at all—these corporations which show revenues, profits and dividends—and put the whole tax on property and the people of the State outside of these corporations, that it would be unjust and arouse an opposition among the people to the system itself. And I want further to say that this *ad valorem* principle of taxation which the gentleman seemed to advocate so eloquently here ought not to stop at the taxation of some kinds of property and except others. I stated distinctly, and it was not denied, that the revenues of a railroad company are property, the dividends of a bank are property, the profits of a manufacturing company, just as much as any other property; and if you are going to tax other property on this *ad valorem* principle, why not tax this on the same principle? That was my argument, sir.

MR. VAN WINKLE. I wish to say a few words for fear what I said yesterday has been forgotten (Laughter). I do not believe there is any intention on the part of the committee to deceive us. I have an apprehension that they are deceiving themselves.

MR. BATTELLE. Will the gentleman please repeat the allusion.

MR. VAN WINKLE. I am afraid they are deceiving themselves, sir. I wish simply to state the grounds of opposition to this matter. In the first place, I oppose it because I do not think we can afford to take one cent of the State ordinary revenue and appropriate to special purposes. We shall want every dollar we can raise, and perhaps more than we can raise, in order to meet the

ordinary expenses of government and interest on such debt as shall be assigned to us. There can be no question about that. In the second place, there is provision in this for raising money specially for school purposes, if the legislature shall deem it proper; and there is abundant power vested and left in the legislature to appropriate any portion of the revenue after it is collected to the aid of the school fund. I want gentlemen to discriminate between these two things. One is only maintenance of the schools; the other the accumulation of a school fund. Although these seem to be had in view by this report both proper and desirable, I think they are continually blended here. Then, sir, there is considerable objection in the consideration that we have not the money to spare; if money is to be raised in part from taxation to be appropriated to the schools, we shall only have to turn round and raise the tax that much on all other property. If we levy 50 cents on the $100 on all the property in the State, we could meet our engagements and then we take the corporation property, which might be supposed to be one-fifth of the whole; all we have to do is to raise the tax on property to 62½ cents. Now, all this inevitably follows. Now, in reference to this *ad valorem* taxation. What we propose is to lay taxes on property and nothing else and to make it equal on all property. It is the only fair way; the only way by which taxation can be equalized throughout the community. In the third place, we propose—and that so far as I am concerned most decidedly—to take away from the legislature the power of discriminating between different objects of taxation. It has been the great source of corrupt and unfair legislation. All sorts of interests and schemes go to the legislature for legislation to authorize things done or taxes laid for their particular interests. The legislature, believing, or pretending to believe, it will promote the public welfare, grants the legislation. It is a constant struggle of contending interests to do by authority of the legislature things that ought not to be done. Let this tax be a lawful one, and then the legislature have nothing to do in their best wisdom but to apply it. Why, it would seem from the statements of the gentleman from Logan, and corroborated by the gentleman from Kanawha, that all the great interests in the southern part of the state are held by corporations and must necessarily be so. It is the same way in reference to these great business enterprises as it is with opening up the country with roads. Our country is so rugged that neither the labor of our citizens nor the property or wealth of our own citizens is equal to opening up the country as it should be, that is,

if applied as individuals or by tax. For these purposes these companies are created, by which the united wealth of the world is enabled to do that which individuals never could do. And so it is in regard to the development of the riches which are lying beneath our soil. Perhaps no private fortune is equal to entering on such an enterprise. No individual is able to risk what is necessary to be risked in the infancy of these businesses. Whenever one of these corporations does go to work risking its capital, what is the result? It is an immediate improvement in the value of all the property around it; it is giving employment to the people; developing from the earth wealth that would be valueless while it remained there. That is brought out as an export and returns in many of the things we want and keeps the balance of trade in our favor instead of against us. Our country has been prosperous for many years, but we have been in such a necessity for improvement, constantly going on, which if we lack money becomes instantly dead instead of active, that without outside capital we never could do the business we are doing. But, sir, not to dilate on these things, which, however, I think are entirely pertinent to the issue, and when an amendment of this kind is offered it necessarily does bring up the whole subject; when a thing is to be amended we want to know as well the condition of the thing on which it is to act as what the amendment is. I think, therefore, sir, that if members will reflect they will see that the amendment proposed in every shape it has assumed so far, is improper. And I will add here again that they are proposing to do by implication—for fear it will be thought I am saying anything personal, I will say the written proposition, does it not—I do not accuse the gentleman who made it of any such intention—they are proposing to do indirectly what has been pronounced unconstitutional — what certainly be pronounced improper; what certainly anybody familiar with the subject will pronounce to be unfair: that is, proposing not only to tax property in common with all other property but to tax the revenues derived from that property. How would you gentlemen farmers like it? Suppose we put a tax not only on your land but then make you give in a return showing how much you made off of it. That is precisely what you are proposing to do with these corporations—not only make them pay their fair share of taxes on property, the value of which they have enhanced as well as that of the property around it, but then a tax on the revenues derived from that property. I think the mere statement of the case shows the unfairness of it; and when we put in the Constitution a pro-

vision that the amount derived from the taxation of corporate revenues are to go to the school fund, the legislature would be justified in inferring from it that they have the right to tax revenues when the property yielding it is also taxed. If we are to have a state that is to be prosperous and successful, we should remember that a great many elements will enter into it. This of a system of schools is only one of them. Another is a fair system of taxation; a tax that is not higher than circumstances compel it to be. Another would be the settling of our land titles. Another is what we have already accomplished in making citizens equal throughout the commonwealth and giving them to a great extent the right to handle and arrange their own affairs. All these are elements in this prosperity we are looking for; but to aggrandize one at the expense of another is rather to defeat the whole than to favor it. If this school fund cannot be raised in one or two years, or at the end of twenty years, without doing an injustice, without injuring another of those elements of prosperity, why, it had better wait. The accretion of this school fund will necessarily, under almost all circumstances, be slow but it will be sure. At the end of a period more or less remote we shall be in the enjoyment of all the advantages an ample school fund can confer. In the meantime—and that question is to come up here, what steps we shall take to insure the immediate establishment of schools throughout the State, is to be considered. My understanding of the matter is that the proper way to proceed in this case would be to leave it to the people of each township, until there is a fund that can be afforded from the State in some way, to raise what money for the purpose each township shall please. Where there is a desire for education, the amount unquestionably will be liberal, and vice versa. But each small district of this kind will be able to suit itself. If the people of one township raise good school funds, it will be seen by others; and in every township which sees its neighbors are making fair provisions for schools, there will be interest and emulation which will stimulate like action on their part.

I am not in favor of forcing anything. Forced growth is always unhealthy growth. You cannot get ahead of nature in anything you can do. You may leave these things to the operation of the convenience of the people. It will not do to force these schools by laying a premature tax, to force people to raise money for schools when they are not disposed to do it. Unless your measures proceed with the conviction of their own minds, you are certainly doing them an injury instead of a benefit; raising in

their minds a prejudice against the whole thing which will postpone the results you desire.

Now, sir, my opinion is that if our circumstances should be more successful than at present; if the revenues of the State shall be greater in proportion to the call upon them than we have reason to expect, there may be no hesitation at the present time in imposing a tax or turning the elements of revenue that can be spared into this school fund. Because I think we will all, when we find we are maintaining the schools necessarily in our townships by a tax assessed on property, at which of course we cannot grumble, for we do it ourselves—why, sir, we will all, the whole people, will call as with one voice on the legislature to take measures to increase this school fund more rapidly if this is the case. Now it is only the increase of this fund that is to be distributed and it is not to be expected every year. Whenever it yields an interest that is worth while, one that will afford even a small sum to each township, then, and not till then, will it be distributed. Let us see then that we enact proper provisions to produce the slow but sure accumulation of this school fund, and then perhaps in time we may be among the states that rejoice in the benefits of established and permanent school systems. I know in the State where I used to live, the school fund was an accumulation, and not a dollar of it—increase or anything else—was spent for many years. It was usually fixed so that it should not be spent till the capital of the fund amounted to so much; and I remember the time when the fund having reached the amount, the first distribution of it was made. There had been schools maintained always from the foundation in that section of the State, a habit my ancestors brought with them from Holland, which had been a free country before they left there. The township system was in existence, and I was at the first township meeting when it was proposed to raise money for schools. I remember the day when the State would give one-half of what any township would raise or distribute—what it had to distribute—in that proportion. I was a mere boy and attended the township meeting out of curiosity, simply to witness what the big folks were doing. I remember well the first proposition was to raise $400 for schools. The second proposition was $600; the third $1000. They voted just by dividing and counting. The people were all assembled out of doors with a presiding officer; and these three sums having been named, the question was put: shall it be $1000. Those who were in favor were requested to go to the right; those opposed to the left. A very

large majority stepped to the right. I state this partly to show how these things have been done elsewhere and to show the feeling of the people was in favor of the matter when it was brought to them, as they will undoubtedly be with us when they come to understand it; and to show how in that state they did not distribute the state fund before it amounted to something worth while. But I make these remarks principally to bring to the notice of members that there must be a distinction and discrimination between the school fund which is to accumulate and the annual expenditure for the support of schools. But great as these objects are they ought not to be attained at the expense of objects equally desirable. I apprehend, when gentlemen talk about attracting others to this State, there may be other causes besides the want of schools that have hindered them; and I reckon among them our system of taxation, or want of townships; and, more than anything else, I would not hesitate if I was in the habit of such things, to wager something handsome on it, that the greatest hindrance we have had to inducing good citizens to come among us is the unsettled state of our land titles. So that we may by establishing our taxation on fair principles, as soon as we have seen its operation everybody will be satisfied with it. Now, I want as well to give the school system a fair trial as to give this system of taxation a fair trial. But this proposition now made is inconsistent with giving to the system of taxation proposed a fair trial; because it does propose to allow the legislature to discriminate between different species of property in reference to taxation against every principle on which the committee on taxation have made their report.

Now, I wish to disclaim again, and I apprehend that every gentleman who has spoken on this side of the question disclaims as truly as I do, any want of friendship for the school system. For myself, I have been devoted to it and anxious for it to be established everywhere, for years and years past; and I have always had great difficulty until now in devising in my own mind any scheme that would satisfy this country with its low values in property and sparseness of population. I believe now that that evil, although it must be continued to exist is greatly removed by the township system, and it was one object I had in view, for I believe in nearly every township the people will be willing by their own act to tax themselves for schools. Now, it is not desirable, if gentlemen view this matter as I do, to do evil that good may come; to do injustice to one great interest in order that another great interest may be benefited. I am very certain that if gentlemen hold the views I do,

I should not apprehend any danger of this provision being retained in here. But I am aware—I am always willing to allow my opponents that much—that they view the thing in a different light and are just as honest in their opinions as I am.

I have said more than I intended when I rose, out of my great solicitude to keep everything even and do no injustice anywhere, in my anxiety to maintain one great principle, or one great system that is as beneficial to our people as any other; that whenever two of these come in contact we must decide between them on the principles of right and justice. However desirable it may then seem to accumulate this school fund more rapidly—for it is only a question of time in reference to that—we will do an injury in another quarter, and hence I think we ought not to insist on this particular provision.

The question was taken on Mr. Battelle's amendment and it was adopted by ayes, 20; noes, 14.

The question recurring on Mr. Brown's motion to strike out the clause as now amended, it was rejected by the following vote:

YEAS—Messrs. Brown of Preston, Brown of Kanawha, Brooks, Chapman, Carskadon, Dolly, Hall of Marion, Hubbs, Lamb, Montague, McCutchen, O'Brien, Robinson, Ruffner, Sinsel, Stephenson of Clay, Soper, Taylor, Van Winkle—19.

NAYS—Messrs. Brumfield, Battelle, Caldwell, Dille, Hansley, Haymond, Harrison, Hagar, Hoback, Irvine, Lauck, Mahon, Parsons, Powell, Parker, Pomeroy, Simmons, Stevenson of Wood, Stewart of Wirt, Stuart of Doddridge, Sheets, Trainer, Walker, Warder, Wilson—25.

The Secretary reported the next clause:

"And all moneys that may be paid as an equivalent for exemption from military duty."

MR. STUART of Doddridge. I move to amend by inserting after the word "duty" in the 13th line the words "and all fines and forfeitures."

MR. BATTELLE. The gentleman will observe, by turning to the 27th line of the report, that the committee have provided for that in another place and in another way. (Reads)

"2. The legislature shall provide by all suitable means for the establishment, within three years from the adoption of this

Constitution, of a thorough and efficient system of free schools. They shall annually appropriate for the support of such schools the increase from the invested school funds; the clear proceeds of all forfeitures, recoveries, confiscations, and fines accruing to the State, etc."

They shall only appropriate for the support of such schools the increase. The difference between the proposition of the gentleman and that of the committee is just this. He proposes to take these fines and forfeitures and put them in the capital of the school fund. We propose to use them as part of the annual appropriation by the legislature, just as they are now used, by the laws of Virginia. Our school fund is made up to a considerable extent by these very fines, as I understand it, that is to say, the fines that accrue from year to year and go to the fund for educational purposes; not the increase of those fines, not the interest on them as the gentleman proposes, but the fines themselves. The committee had this very question under discussion and it was proposed at one time to give them just the direction intimated by the gentleman from Doddridge; but it was thought, on further reflection, judicious to give them the direction proposed here in the report; for the reason that our people have been accustomed to that use of them and for the further reason that, as the gentleman from Wood on my left (Mr. Stevenson) this morning very properly said, the great difficulty of providing the ways and means, especially the great necessity of having those ways and means in starting the system—it was thought injudicious to divert that revenue coming from fines from the direction it has been accustomed all along to take and lock it up in a capital where the interest of it only could go from year to year to the people. I hope the Convention will not change the arrangement. If the gentleman from Doddridge desires it, and if he will allow me the suggestion, to insert at the close of this section a clause that after the lapse of a certain number of years the money coming from fines shall be by the legislature applied to the capital of the school fund, after we have gotten under way a little—I do not know that the committee would have any serious objection to it.

MR. HAGAR. I spoke of that and thought that would be best.

MR. BATTELLE. Yes; but for the present I beg leave to suggest to the Convention whether it is not wisest and best to leave the provision as it is. It is about the only revenue we shall have aside from direct taxation. As I said yesterday, we have aimed

not to disturb the habits of people any more than was indispensable in our judgment for the perfection of this system; and if we take that away from the annual appropriation and put it into the capital of the fund, we will leave ourselves very lean and poor, with nothing except what comes from direct taxation. I hope the Convention will let it stand as it is.

MR. BROWN of Preston. I would inquire of the gentleman from Doddridge how he expects to maintain a military system within the State. It is known perhaps to all the members of this Convention that the military fine fund has never yet sustained the expenses of the militia that is now established by law within the limits of this State, and it is only taking out of one pocket and putting into another. It is only taking away from the military fund —a fund that has hitherto been used to support it—and diverting it to another; by taking out of the treasury so much money hitherto used for the military system, you will have to make other provision for that, if we are to have a military.

MR. STUART of Doddridge. The gentleman will observe that my amendment does not at all interfere with the disposition of the military fund. It is all there. My amendment simply proposes to divert the fines and forfeitures which have always gone to the literary fund heretofore. The moneys paid for military exemption have not heretofore gone in that direction; but the funds referred to in the amendment I propose here have always heretofore gone in that way. The gentleman may not object to the amendment. The only difficulty is that it seems to come in where the committee do not desire it.

Now, I do not make this motion to amend because I am not as great a friend and as warm an advocate of a free school system as any man can be, but it is simply as to the policy or mode by which it will be carried out. I think, sir, the great object of the gentleman is to get a sufficient fund. At present it will be like a drop in the bucket. These fines and forfeitures are irregular, uncertain; and even if you appropriate them yearly, you don't know whether you have one dollar or a thousand. It may not be anything; it may be a considerable amount. Let it go to the general fund, and when it gets there, then the revenues arising from that will be definite and certain, regular and uniform, and we will know what we are likely to get and can make calculations on it.

I think, sir, it should come in here. Our object should be an accumulation of a sufficient school fund as fast as possible, that

the interest growing out of that fund may be sufficient to keep up a free school system within our State. We look to that object. That is the reason I have offered this amendment, and I think it should come in where I have proposed. The military matter is a question that does not come up on my amendment.

MR. BROWN of Kanawha. The motion of the gentleman from Doddridge seems to me to defeat the end we have in view in having a school fund. Or in other words, that it is to keep the present generation from having any benefits from that fund and give it all to their great grandchildren. Now under the law of Virginia the people benefit every year from these fines and forfeitures arising from offences all over the commonwealth, which go to the state educational fund and are appropriated to the schools annually. If you put that all into a fund and use only the interest on the investment of it, the fund will accumulate rapidly and in a few years it may grow into a very large fund and the interest arising from the investment of it would go back to the people in some such form as would render it sufficient to distribute. But the interest derived from it for a number of years would be so small that distributing it into such small proportions would be like dividing a cent. I would use this annual fund at once and not deprive the people of what they have been heretofore enjoying, in order to give it to our grandchildren. It is a stab in the dark, in my mind, to the school system. Now, I don't know the amount of this school fund, but the fines and forfeitures that result every year in the State must be a considerable sum. If you wait until you accumulate a fund, the interest of which will be equal to your annual needs, you will wait a good while. I imagine, however, that at present, as the chairman of the committee has remarked, one very important consideration—and I confess the same idea occurred to me in looking over this report that one very important consideration is that in entering on a common school system to have something to start with. It is a great advantage if you can appropriate a fund the people have been accustomed to receive to the same purpose to aid and assist this school system. They had that, and to deprive them of it is to at once make the whole subject odious to them, because they will look upon it as rather a deprivation. But, again, the funds that will ordinarily arise for a few years to come from fines, forfeitures and confiscation and the like will be very considerable; some much larger hereafter than heretofore. It cannot be questioned that from the present state of facts that

there must be more convictions, and a great many more fines—and from the nature of the offences heavier fines, confiscations, a thing that was almost unheard of heretofore—but there must be an immense amount of confiscations that must take place under operation of the laws recently and will continue to. Besides all this property would go directly into this fund, to be distributed annually and will, to no small degree supply the immediate funds for present wants. Now to place all that into the permanent fund and call upon the people to wait three or four years until the interest is sufficient to distribute, is to destroy your system, for you will have to supply this deficiency by direct taxation. I think therefore the committee has very wisely and properly placed this annual fund where they have and left the permanent fund to be made up of a different character of means.

There is one thing the gentleman has called my attention to. I do not see that it does any harm or good; but the moneys that may be paid as an equivalent for exemption from military duty are to go into the permanent fund. I don't understand what that exemption means. I supposed at first view that it meant that if a man was drafted and did not choose to go and furnished a substitute that the amount he paid the substitute would go to this fund; but then, at the first thought, what he paid is paid to the substitute.

MR. BATTELLE. There is a wrong punctuation; there ought to be a semi-colon (;) there after "duty." The clause following has reference to the series of provisions preceding separated by semicolons. The effect is that all of these are set apart as a separate fund.

In reference to the inquiry of the gentleman from Kanawha, I will state in regard to this provision that the committee found in several constitutions reference to military fines in the ordinary sense of that word. That there are in every community—and in some states I think laws are made for the accommodations of such persons—those who are willing beforehand to pay as an exemption from the performance of military duty, some of them perhaps on conscientious grounds, some of the very best people—not very many of them in this State or any other. I don't know that a majority of our legislature will ever pass such a provision but it is possible they may. This does authorize them to do it. But if a law of that kind should be passed, this merely provides the direction the fund should take. It is not the understanding, however, that that includes military fines in the ordinary sense of that word. As the

gentleman has very pertinently said, it may not do much good, but, as the committee think, it will do no harm.

MR. STUART of Doddridge. The gentleman from Kanawha has the faculty of presenting things he does not like in the worst possible aspect. He seems to think the amendment I proposed would benefit our great grandchildren perhaps but the present generation not at all. Why, sir, if the fines that may accrue next year are put into your school fund, the amount will double itself in 16 years and that increase can then be applied to the education of the children of your State. That is only half a generation away. And doesn't the same principle apply to our other amount that is raised? Will not the argument be just as strong to say that should be applied annually as well as the fines? I suppose the increase there too will be only for the benefit of our great grandchildren.

MR. BATTELLE. I was just going to remark, however, but the gentleman from Kanawha has so well stated it—better than I could that it is perhaps not necessary to recall attention to it. The committee had this purpose in the position of this provision, that it being a regular source of revenue it should be put with the regular annual appropriation; and we put these other things—everything—to go to the capital because they are irregular. We don't want irregular supplies to the schools from year to year; for a large supply this year and almost none the next would be doing more injury than good; and because these funds are to a great extent a regular supply, as well as for the other reason they have all along been so directed, and for the additional reason that in the beginning the people will need this as almost the only resource except direct taxation in starting the system. For these reasons the committee put it where it is.

MR. STUART of Doddridge. I have no further remarks to make. I might simply ask the question: if these are regular state supplies, I would like some gentleman to state what the amount is.

MR. BATTELLE. We made one inquiry at the auditor's office in reference to that point, and the reply was that he did not know and could not guess; that the sole information on that subject was locked up at Richmond and inaccessible; that perhaps it might be in the private library of some legal gentleman in the shape of auditors' reports or something of that sort; but I have not been able to get at it.

MR. STUART of Doddridge. It strikes me it is a very indefinite amount. The legislature would not know how much to appropriate; could find no basis to calculate on. It is indefinite and uncertain.

MR. BROWN of Kanawha. I happened to turn to the code last night. It was—60 and gives the last distribution. I noticed there the law requires the officers to distribute $80,000 a year, and unless it is limited that would be the distribution. It is inside of $80,000 annually. I don't know how much of it is of one thing or another.

MR. STUART of Doddridge. I understand the State of Virginia had a school fund of over two millions of dollars, and the interest on that is, I believe, some $60,000 or $70,000 annually.

MR. BATTELLE. We have provided elsewhere for our share of that.

The question was taken on the amendment and it was rejected.

MR. LAMB. I would offer the following amendment, to come in after "duty" in the 13th line.

"And such sums as may from time to time be appropriated by the legislature for the purpose."

I suppose it is necessary to have some clause of that kind in this part of the report.

MR. SOPER. I offer the following as a further addition:

"one-twentieth of one per cent on the taxable property of this State and such other moneys as may be provided by law."

MR. LAMB. I would suggest to the gentleman from Tyler to let the vote be taken on the amendment I have offered.

MR. SOPER. This is sequentional, for one-twentieth of one per cent.

MR. LAMB. I would accomplish my object by asking a division of the gentleman's amendment and dividing mine.

MR. BATTELLE. That is the amendment is it?

MR. LAMB. "And such other moneys as may be provided by law."

I withdraw the motion asking a division upon it.

MR. BATTELLE. All I wish to say to the Convention is this, that they should distinctly understand what is the effect of this vote. I presume they do perhaps. The committee have made no provision for increasing this capital fund by taxation. The amendment offered first by the gentleman from Ohio and that offered by the gentleman from Tyler contemplate increasing the capital of the school fund by taxation. The committee had provided for annual taxation for the support of schools both of person and property; and they also provide for the several townships, cities and towns taxing themselves for local school purposes; but they do not provide that the legislature may impose taxes for the capital fund. My object in making these remarks is that we may all distinctly understand the bearing of this. I confess I cannot very well claim to know what is best in the case. I am fearful, however, that we are complicating this business of taxation—the very thing the committee have endeavored to avoid. The committee sought to make this scheme as simple as possible. I do not undertake to say they have done this, but that was the endeavor. We confined taxation simply to the annual support of schools, except in one exceptional instance, in reference to revenues of corporations; but general taxation we confined to the annual support of schools. Now, I would like to know the effect upon the scheme of providing here for taxation—two separate taxations: one for the capital, the other for the annual supplies.

MR. BROWN of Kanawha. In looking over this report of the committee, I see that in the 30th line it is provided: "and such an additional sum derived from taxation on property as shall, with the sums raised for school purposes, etc." Now, then, if you add to the school fund by a direct tax on the people and also tax them annually for state distribution of another fund, and then in the township as provided, it will make three distinct school taxes. This would be killing the school system. You cannot make it more odious than by charging three distinct taxes for school funds. You had better make it all in one. The people will stand double the amount in one tax than if you deal it out in three. While rendering it odious, it adds too little to the school fund in my humble opinion; it results in another account to be kept by your auditor; there will be another expenditure, and this increase in needless detail is only increasing the expense. I have heard the auditor complain of the annoyance and difficulties that grow out of our present system—the second auditor, who keeps the school fund.

Now, if you tax people annually and if it is right, we are obliged to meet that, to levy an annual tax on the people to provide in part the revenues for this school fund; then do not render it odious by adding another little tax at the same time to add to the big fund. The annual fund is what we are seeking. You do not want to require that entirely by taxation; and all these other sources of revenue are irregular and can so be placed in any fund and put at interest and the interest distributed annually. I am satisfied it is impolitic. I think it will cost the system a great deal more than it will ever pay to the system when you try it.

MR. SOPER. It appears desirable, sir, to obtain a permanent school fund and have that fund constantly increasing. From the items from which that fund is to be derived there appears to be an uncertainty about the annual amount of its accumulation. Now, the object I have in view is to present the question directly to the people by way of direct taxation for the annual accumulation to this fund. I mentioned one-twentieth of one per cent. It is a small sum, it is true, sir, it will be $5 on every $1000 of the valuation of the property throughout this State; and when that amount is collected annually, the sum will not be so very small, but it must be continued until there is an alteration of the Constitution. This amount will be constantly accumulating. Now, the gentleman objects to it because we are presenting other taxations for school purposes. I want, sir, to have but two taxations presented for school purposes. I want one to go into the general fund to be put in that every year. I want another taxation to be voted and carried by the people of the townships, and the amount of that taxation to be regulated very much by the amount of money that will be distributed from the general fund. Then, sir, your system is very simple and easily understood. We all agree that this general fund ought to increase somewhat rapidly; but as I before remarked with the sources thus far designated it will accumulate very slowly. I have suggested a very small sum which the legislature can increase if they see fit.

MR. LAMB. The proposition I have made seems to have been entirely misunderstood. I proposed to insert after the word "duty"; "and such sums as may from time to time be appropriated by the legislature for the purpose." That proposition does not provide for the levying of an additional tax for the purpose of increasing the school fund; but if inserted it would authorize the legislature whenever the case occurred that they had funds they could

spare it would authorize them to apply those funds to the increase of the capital of the school fund if they should deem it proper to do so. That, it struck me, was an authority which ought to be vested in the legislature. Occasionally, accidentally, receipts will accrue in the course of state finances. I am not referring to the large amount which was received by the State of Virginia from the distribution of the public revenue, but that may render my idea in regard to the matter. That money was appropriated at the time to the capital of the banks. In cases of this kind, and such will be occasionally recurring, in the history of the State, or the State may by some accident become possessed of some unappropriated property or money, I think you might leave it to the discretion of the legislature to judge under the circumstances of the time, if they can do so with propriety, to apply that to the capital fund. This was all that was contemplated by the amendment as proposed by me. The amendment of the gentleman from Tyler goes further and probably would be liable to the objections referred to by the gentleman from Kanawha.

MR. SOPER. One word. I think the sum I propose is a very small sum. I am confident the people throughout the State will not object to it. If we leave this thing entirely to the legislature; and if we are to be met with enormous sums for taxation mentioned by gentlemen who spoke yesterday, why, sir, whenever the legislature becomes satisfied that those enormous sums are to be met by taxation throughout this State, they will lose sight of this school fund. I think the accumulation of this school fund so important that I want to start with a small sum to commence with but which when it is paid into the treasury you will find will make considerable of an increase every year. I think the friends of this system will see the necessity, from the legislature losing sight of the school fund that we make this provision as a precaution against such contingencies.

MR. STUART of Doddridge. Not that I am going to vote against the amendment offered by the gentleman from Tyler, but I want to show the operation of it. One-twentieth of one per cent is 50 cents on the $1000. Now, where property is assessed to the amount of two millions, the taxes collected at this rate would be $1000, from that county. Although it may look small, let me tell you it is a very large item. I suppose many counties would pay some $2000 every year into the school fund at that rate.

MR. BATTELLE. I just wish to say that since the explanation of the gentleman from Ohio, my colleague, and having examined the amendment offered by him, I am inclined to approve of it. It is simply permissive to the legislature; it does not provide for having any separate tax; it only provides for the contingent case which he has suggested and which I need not repeat; and it avoids especially that point suggested by myself and fully explained by the gentleman from Kanawha. It avoids that point of imposing a separate tax. I hope the Convention will adopt the amendment of the gentleman from Ohio, and I think that will be sufficient.

The vote was taken on Mr. Soper's amendment and it was rejected.

Mr. Lamb's amendment was then adopted, and also the clause as amended.

The next clause was reported by the Secretary:

"Shall be set apart as a separate fund, to be called the school fund, and invested under such regulations as may be prescribed by law, in the interest bearing securities of the United States or of this State, and the annual increase thereof shall be sacredly devoted and applied to the support of free schools throughout the State, and to no other purpose whatever. But any portion of said increase remaining unexpended at the close of a fiscal year shall be added to and remain a part of the capital of the school fund."

MR. SOPER. If I understand it, only the increase is to be distributed annually. The capital ought to accumulate until the dividend would amount to something. It may be very small if it is to be distributed the first year.

MR. BATTELLE. The first year perhaps is the very time they want it worst, whatever it is. As already stated, the schools will be starting then, the people will need all the help they can get. I don't think any very great good is to be achieved by passing it. We had better go to work at once and advance to maturity as far as possible.

MR. STUART of Doddridge. I want to understand: the annual increase thereof shall be sacredly devoted and applied to the support of free schools. I don't know whether we understand this word increase right. That is the "annual increase" that it will apply.

MR. BATTELLE. What the committee meant is interest.

MR. STUART of Doddridge. I would rather you would use that word.

MR. BATTELLE. I believe I prefer that word myself.

THE PRESIDENT. I would suggest "proceeds."

MR. VAN WINKLE. "Interest" expresses it best.

MR. LAMB. If gentlemen will refer to the construction of the preceding sentence, they will see it refers to stocks and securities. It is annual interest on securities.

MR. BATTELLE. Very well; let it be "interest."

MR. SOPER. Strike out the words: "sacredly devoted." I don't think they make it any stronger—has no force.

MR. BATTELLE. I am not tenacious, sir. I confess some little attachment to that word "sacred." I did want to keep that idea before the legislature all the time. But let it come out.

MR. VAN WINKLE. I wish to offer an amendment: to insert in the 17th line, after "thereof" the words "and the annual interest thereof, after the fund amounts to one hundred thousand dollars." After it amounts to one hundred thousand dollars the interest will probably be about $6000. It will give about $2000 to a county, and that in the large counties of ten townships would be but $160 to a township. We had better let it accumulate without interruption till it amounts to a hundred thousand dollars; then the first distribution made might be perhaps $180 to $200 to the township. And it will continue to a greater amount afterwards.

MR. BATTELLE. I hope that amendment will not obtain. I have a very great respect for posterity. I yield to no gentleman in regard for them. But I have great respect for my own times and my own people; and, as already stated, the present time is precisely the time when the people will need help from this fund, and though it may be little it will be something. That little will be a nucleus around which future fruits are to be gathered. It would be a very fine thing, I know, to let this go on and accumulate—

MR. VAN WINKLE. I stated the capital fund would be $150 to $200, I meant to say the interest would be from twelve dollars to twenty. I doubt if it is worth dividing before it gets to that.

MR. BATTELLE. I have not stopped to calculate. No man here can calculate, with the data now before us, as to the amount of distributable avails, the first, or second or third year. But it will be something and that something will be a benefit to the people and serve to call out something from the people themselves, even a greater amount than they receive from the legislature. It will be an encouragement to them and it will be one of the most potent instruments for the organization of this scheme. If we want to take away the present interest of the people in this thing, it seems to me precisely the way to do it to provide that it shall be looked for five, ten or twenty years to come.

MR. VAN WINKLE. Permit me to finish the calculation. I only want to say that there should be, averaging the inhabitants at dozen each, there would be 300 townships; and on the first distribution it would be $20 to the township; and I simply asked whether it is worth while to distribute it before there is $20 to the township.

I move to insert, after "thereof" in the 17th line: "after it amounts to $100,000."

MR. BROWN of Kanawha. Then with a view of getting the English of the sentence as well as expressing my idea, instead of that of the gentleman from Wood, in regard to distribution of the fund, I move an amendment to the amendment to strike out "annual increase" and insert "interests" in the place of "increase" and "annually" in place of "sacredly devoted and." I want to express the idea that the interest shall be annually applied, and not that the annual increase shall be applied. That increase would not be annual and it might be applied once in twenty years.

MR. BATTELLE. We precisely agree in that respect and make specific provision in another place that it shall be annually applied by the legislature.

MR. BROWN of Kanawha. The amendment makes the sentence read good English: the interest thereof shall be annually applied to the support of free schools—expresses the simple idea I have in view.

Then, in reply to the remark of the gentleman from Wood: you can make that amendment afterwards as a subsequent amendment. It only confuses the vote on it. I am opposed to the amendment of the gentleman from Wood, and I want to get it in shape

that I can vote for it. The very idea that he includes in his amendment is what I dislike. We are entering on a free school system for the support of which we are providing revenues which shall operate at the same time. Take the calculation of the gentleman from Wood. Suppose the fund shall be able to pay only $20 to a township: is there any difficulty in applying that $20? Why every sheriff has his accounts to render at the capital and he knows precisely the amount of the school fund that is to go to his county and township, and he has to pay at the treasury of the capital so much money from his county. He just takes in that fund and receives credit for it at the capital. It is all transacted, without any change to make. No inconvenience about it. He can divide the figures as easy at $20 as at $20,000. That will go to the township in addition to its own fund to aid in carrying on the schools. If you hold this up, deprive them of that for 20 years, why they are just deprived of that much more. You hold out a benefit in the distance but it would seem far remote.

MR. BATTELLE. I prefer the phrase as it stands. It seems to me there is a difference between "the annual interest thereof shall be applied" and "the interest shall be annually applied." The difference may be a slight one; but it specifically reads that it is the interest that is to be applied. It is the annual interest arising from the school fund; and we elsewhere provide that that shall be applied annually.

But I wish to make the remark in reference to the proposition of the gentleman from Wood; the effect of it is to hold this whole school system in abeyance, bearing out precisely what the gentleman has advocated all through this report, that this school system is to be held in abeyance, put out of the way, until there was a large accumulation of interest; and that will be precisely the effect. It postpones all action on this subject for ten, twenty or thirty years. Other interests I know ought not to be overlooked; but as I remarked yesterday I hold the best interests of the State will be promoted by keeping this interest where it can be used as fast as it accrues. There is no more potent or all pervading instrumentality in the State for its growth and prosperity than a system of education for the children of the State and no instrumentality of which there is greater immediate need. The crying wrong and evil of our past was the neglect of this instrumentality. It is the first, the foremost and most urgent want that addresses itself to the founders of this new commonwealth. What we need is the speed-

iest possible and most energetic action; not postponement and discouragement. Whatever resources are possible, we need them as soon as they can be reached. As I have said before, the dividends from this fund at first will be small, but it will be something; and something is always better than nothing. They will be the beginning around which greater and more successful efforts may cluster.

MR. HERVEY. Perhaps it would be well enough to say a word on the proposed amendment of the gentleman from Wood. If the fund to be distributed should be $20,000 only, it would be some $4 or $5 to a township by the calculation of the gentleman from Wood. Forty-four counties, 264 townships; there will be about $14 to each township. The gentleman from Ohio has thought that we would propose to be putting back the fund of the State for some future purpose. That cannot be done, sir. This money is to be held for that specific purpose; not a dollar lost. The question is when the proper time should arrive to distribute this fund—commence distributing it. It seems to me to commence distributing it before there is a fund at all would certainly be premature.

MR. PARKER. I am unable to see what application the amendment of the gentleman from Wood can have at this time. I take it to be a settled fact that the literary fund of the state now amounts to $2,500,000. It is also conceded that our fair proportion coming to the new State must amount to near a half million. I understand by the clause we have already adopted that that just proportion goes into that fund. That I understand to be the effect of what we have already done; so that from that fund alone, the literary fund, which is now fixed, the school fund of the new State is to have at least a half million and on the books of the new State the school fund will be entitled to a credit for that amount. Of course, that will give an annual interest of $30,000 which, of course, the State is to pay. If she has not the money in the treasury, she will raise the money by taxation. So that we have a fund which will yield an annual interest of $30,000, principal a half million, fixed, if anything is fixed. This doesn't leave any doubt what the intention of the Convention was in relation to these stocks where it says moneys received from the mother state by this State for educational purposes, which struck me as a little vague when we passed it. But it seems to me it will throw about that, and the question will be where this half a million of the literary fund is to go. Really, whether it is the intention of the

Convention, taking the whole together with this amendment, if adopted, whether it was the intention of the Convention to place that just proportion of the literary fund to our school fund or not, it seems to me certain it would raise a doubt. Therefore, I cannot see any—not the least—application that that can have at the present time; and it might raise that doubt on the construction of this clause, in relation to where our just share of the literary fund is to be applied.

Mr. Brown's amendment was reported by the Secretary:

Strike out "annual increase" and insert "interest"; strike out "sacredly devoted and" and insert "annually."

MR. VAN WINKLE. I will withdraw my amendment till the vote can be taken on this.

The vote was taken on Mr. Brown's amendment, and it was adopted.

MR. VAN WINKLE. I now offer my amendment again.

The Secretary reported it:

To insert after the word "thereof" in the 17th line, the words: "after it amounts to $100,000."

The vote was taken, and the amendment rejected; and the clause as amended was adopted.

The Secretary reported the closing sentence of the section:

"But any portion of said increase remaining unexpended at the close of a fiscal year shall be added to and remain a part of the capital of the school fund."

MR. VAN WINKLE. I move to strike that out, sir.

MR. BATTELLE. With consent of the Convention, I would like to make the same change there as before—substitute "interest" for "increase."

There being no objection, the substitution was made; and the vote was taken on Mr. Van Winkle's motion, and it was rejected.

MR. BATTELLE. Before we pass on that section, I wish to offer an amendment to come in the place of the clause stricken out yesterday, in the 5th line ending with the 7th, between "specified" and "any." We have not yet taken the vote on the section, and

before doing so I propose to insert in the place indicated the following:

"The revenues accruing from any stock not pledged to the sinking fund hereafter acquired by this State in any bank or corporation and the proceeds of the sale of such stock if the same be sold."

THE PRESIDENT. The Chair is under the impression that the vote was taken and that clause adopted.

SEVERAL MEMBERS. The clause was stricken out.

MR. BROWN of Kanawha. It seems to me that subject cannot be raised again, as I understand we have passed over this section now and have adopted or rejected everything in it. Now, the question simply recurs on the adoption or rejection of the section as amended.

MR. BATTELLE. I will modify the amendment by taking out the words "or other corporations."

MR. BROWN of Kanawha. The question I raise is whether we can take it up again.

MR. BATTELLE. It is an entirely different provision from the one we had before us.

THE PRESIDENT. Would not the purpose of the gentleman be effected without going back of this portion of the report?

MR. BROWN of Kanawha. If I understand, sir, we can do nothing but adopt or reject this section as it is after having gone through and taken it by part.

THE PRESIDENT. The Chair understands that that portion of the report to which this amendment is now proposed has been either absolutely stricken out or adopted.

MR. HALL of Marion. The proposition in the precise form proposed to be added we acted on and rejected. It was a specific proposition to strike out the "other corporations," and the other was to strike out the whole matter proposed to be inserted.

MR. BATTELLE. If the gentleman please, he is most certainly mistaken. This proposition was not before the Convention. If the Clerk will read the record he will see it does differ.

The gentleman from Marion will perceive a wide distinction

between the two propositions; but the difficulty is the return back to a portion of the work which we passed upon.

MR. BATTELLE. Will the Chair indulge me a moment on that question of order.

MR. HALL of Marion. It may be my stupidity, sir, but the proposition—they read precisely, on my paper—that part of it was acted upon and rejected.

MR. VAN WINKLE. One refers to existing stock, and one to stock hereafter to be acquired; that is the difference.

MR. HALL of Marion. My understanding is the thing was before us in both forms.

MR. BATTELLE. One is for existing stock under the new State and is that hereafter to be acquired; but the proposition now before the Convention now also excepts the stock that may be pledged to the sinking fund, as was carried yesterday.

In reference to the question of order, sir, if the Chair please, it seems to me what is proposed now is only what we have been doing all along. We pass through a section, sentence by sentence until we get to the close, but before taking the final vote on the section, we have offered other amendments, unless my memory is wrong, to perfect the section before finally disposing of it. It is only reasonable, to effect the object of the Convention, that at any stage before a section has been finally acted on it should be open to amendment, whether this is asked by a committee, the chairman of the committee or by any member.

THE PRESIDENT. The impression of the Chair is that when we have voted on a clause and sentence, we have not passed back to amend. However, the Chair may be mistaken in that.

MR. HERVEY. I desire to call attention to the fact that every report made by a standing committee shall in its turn be considered open to amendment section by section. Now if this section had been voted on, it would be clear that it would not be open to amendment; but there having been no vote on the section as a section—

THE PRESIDENT. The Chair however, would remind the gentleman that we voted to pass on the section by clauses, and that any lack of passing the section entire would not make any difference.

MR. VAN WINKLE. If the President will pardon me one moment. I am opposed to this amendment, but I think the gentleman has a right to offer it. When we have got through a case, additions to a section have been made. It is better to reserve it, of course. It is of no consequence where this comes in. It could be offered as an addition to the section and the Committee on Revision would put it in its proper place. If it was an entirely new proposition the gentleman would certainly have the right to offer it. But I hope we are not going to stand out whether it gets in the middle or at the end. I think the true objection to this is that it was included in the one voted out. The clause applied to all bank stock, and this is a part of it.

THE PRESIDENT. I think the proposition is right itself. It does vary from the original one. In reference to the action here, the adopting by clauses is really a violation of the rule established in the matter of considering reports by section.

MR. VAN WINKLE. I did not mean to raise a point of order but merely threw out the suggestions that while the original clause included the bank stock this wants to let in a particular kind, such as is not pledged. I don't think it is exactly right to force this on us in a different shape. But I simply state that the proposition should be voted on although I am opposed to it.

MR. STEVENSON of Wood. I think the reason many gentlemen voted to strike out that clause was not because it applied that principle to the stock which the State should hereafter acquire but because it applied to stock the state now holds; but they would have voted for this principle if it had applied only to stock which might be acquired hereafter. I think a majority of the Convention are in favor of that principle applied in that way.

MR. LAMB. It strikes me the proposition is a very distinct one from the one which was voted against by the Convention yesterday. At least to my mind it is so. I voted against the proposition of yesterday because it included stocks which I regarded as simply pledged to the sinking fund. This proposition is not liable to that objection. I have no doubt other members of the Convention voted against that proposition on this same ground that I did; that if a proposition had been made not liable to that objection, the vote might have been entirely different. It is proper at least that the chairman of the committee should have the opportunity of trying the proposition in a form which is likely not to

meet the objection, as I considered it, to the proposition rejected yesterday.

MR. VAN WINKLE. As there is not the slightest probability that this State will ever have a dollar of bank stock, we may let it go; but I do not like to have a provision in the Constitution that would be forever inoperative.

The hour having arrived, the Convention took a recess.

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AFTERNOON SESSION

The Convention reassembled.

THE PRESIDENT. The Chair would remark to the gentleman from Ohio that on consideration of that subject it is the opinion of the Chair that his motion would not be in order. He would feel very much disposed to permit the motion; but it will be recollected that on passing over the report the second time he will have the same opportunity to throw in the amendment. That consideration connected with the fact that if we passed by our rule and allowed ourselves to pass back over the same propositions, we might lose much time where the matter can be effected on the second reading. The Chair would have to rule against the gentleman at present.

MR. BATTELLE. I cheerfully acquiesce, sir, in the decision of the Chair. I believe the next thing is to vote on the whole section.

The section as amended was then adopted.

The second section was reported by the Secretary:

"2. The legislature shall provide, by all suitable means, for the establishment, within three years from the adoption of this Constitution, of a thorough and efficient system of free schools. They shall annually appropriate for the support of such schools the increase from the invested school fund; the clear proceeds of all forfeitures, recoveries, confiscations and fines accruing to this State under the laws thereof; not less than one-half of the amount derived from the State capitation tax, and such an additional sum derived from taxation on property as shall, with the sums raised for school purposes in the several townships, cities and towns, by the proper authorities thereof, be sufficient to provide primary instruction in free schools, du-

ring at least three months in each year, to the children, between the ages of six and twenty-one years, of all the citizens of this State."

MR. SOPER. In the first sentence, I move to strike out the words "by all suitable means." They are not necessary, only lengthen our Constitution so much.

MR. BATTELLE. I much prefer the retention of those words, sir. We give there a grant of power to the legislature to provide for the establishment of this system of common schools. The intention is that if the legislature find that this or the other instrumentality is necessary that there shall not be any quibble about the constitutionality of it if it is properly and on the merits a means to the end of establishing common schools I do not think the words are merely superfluous. Well, in this Constitution, we cannot, of course, pretend to mark out all the details, though we have specified some features of the common school system; and the intention of these words is that the men of the legislature may be clear as to their power so long as they keep within the scope of that end, namely, the establishment throughout the State of a system of free schools for the children of the State.

MR. SOPER. If the amendment prevails, it will then read: "The legislature shall provide for the establishment, etc." If you leave the words in "by all suitable means"—I suppose them to be unnecessary—but suppose if you retain them the legislature should undertake to lay a tax and when they come to enforce it an issue should be taken on their action by saying they had not adopted "suitable means" I think a difficulty might arise by captious objections from that source. But if we omit this, it is clear and direct giving the whole power to the legislature to do as they please in relation to the matter. I think it would be better to strike the words out.

The vote was taken and Mr. Soper's motion rejected, and the clause adopted.

The second sentence was reported.

MR. BATTELLE. If there is no objection, as I suppose there will be none, to keeping up the form of phrase, the word "increase" will be replaced by "interest."

With this modification, the first clause of the second sentence was adopted, and the next clause reported:

"The clear proceeds of all forfeitures, recoveries, confiscations and fines accruing to this State under the laws thereof."

MR. SOPER. Mr. President, a portion of the forfeitures have been applied to the general fund. There ought to be some qualifying term here, sir. "The forfeitures not otherwise appropriated in this article" would be proper I suppose, sir. I propose that as an amendment.

The amendment was adopted.

MR. HALL of Marion. I suggest in the 26th line that the word "net" in lieu of "clear" would be better.

MR. BATTELLE. I have no objections, sir. I copied that provision from several existing constitutions exactly as it is here. It occurs in many of them "the clear proceeds," but I have no objection.

MR. LAMB. I would inquire of the chairman of the committee what is the precise effect of "recoveries"? If the word was left out would not the sentence express more clearly what is intended than if it is retained?

MR. BATTELLE. No, sir; it was intended in reference to forfeitures of recognizance, appearance, and so on. The authorities whom I consulted on that subject did not seem to be precisely clear as to which was the proper word, and the committee were of opinion that both words would certainly cover the case.

MR. LAMB. It strikes me it is introducing an uncertainty into the construction of the clause and may perhaps make it mean what the committee mean what they did not mean.

MR. BATTELLE. If that be so, if the word "forfeitures" be applied in this State or has been heretofore applied, to cover all such cases, there is no necessity for the word "recoveries."

MR. LAMB. It certainly covers the forfeiture of recognizance. It is the proper word in that case.

THE PRESIDENT. Does the gentleman propose that as an amendment?

MR. LAMB. I merely suggest it to the committee. It strikes me the sentence would be better without it than with it; more clear perhaps.

MR. BATTELLE. I have no objection to its being stricken out.

MR. LAMB. That can be done by general consent.

There being no objection the word "recoveries" was stricken out, and the clause adopted.

The next clause was reported: "Not less than one-half of the amount derived from the State capitation tax."

The clause was adopted without discussion, and the next reported:

"and such an additional sum derived from taxation on property as shall, with the sums raised for school purposes in the several townships, cities and towns, by the proper authorities thereof, be sufficient to provide primary instruction in free schools, during at least three months in each year, to the children, between the ages of six and twenty-one years, of all the citizens of this State."

MR. SOPER. I don't comprehend the meaning, sir, of this portion of the section I will inquire, is it intended that the taxation shall only make up any deficiency in other quarters so as to enable the school to be held three months in each year in a district. Whether the committee understand it to mean that taxation shall only be resorted to make up deficiency from any other sources of revenue?

MR. BATTELLE. Yes, sir, that is about it. They mean that the legislature shall resort to taxation on property enough to raise a sufficient amount to provide that there shall be a school in each district at least three months in each year, and as much more as they see proper to do. The requirement contained in the clause, as the committee understand it is that they shall provide by taxation means sufficient to furnish a school at least three months and as much more as they please; but not less than that.

MR. SOPER. It says a tax on the townships.

MR. BATTELLE. A tax by the legislature on the whole people. "The legislature shall provide." They shall first appropriate the proceeds if the interest on the school fund; they shall next appropriate the net proceeds of all forfeitures, confiscations and fines; next, not less than one-half the amount derived from the State capitation tax; and last "such an additional sum as shall, with the foregoing and the township taxes, be sufficient to keep school three months at least. The sources of revenue are enumerated here.

MR. SOPER. It will admit of that construction, sir, I believe.

I move to strike out "twenty-one" and insert "sixteen," in the 35th line.

MR. HAGAR. I propose to amend by saying "eighteen."

MR. SOPER. This common school education, sir, is intended mostly for small children. When a person gets to be sixteen years of age, they are capable usually of earning their living; and I believe it has been customary for young men of this age to work during the summer season and go to school in the winter, or go to night school if they are entirely without education. I think we had better confine this whole school system to children between six and sixteen years of age.

MR. BATTELLE. In this phrase, the committee follow exactly the language of the code of Virginia, in reference to specifying the beneficiaries of the school fund, fixing it at six to twenty-one years; and I think it is wisely fixed in reference to the present wants of our community. We have all through our country a great many young persons, men and women, over 16 years of age whose parents will desire to have them benefited by this school fund. There may be some in some localities who during this earlier age have not had opportunities of going to school who will now have opportunities of education after the commencement of these schools. It would cut out all such. If a child happened to be over 16, a youth, he might need and desire the benefits of education and a common school right in the neighborhood and the parents contributors to this school fund; yet the amendment of the gentleman from Tyler would cut off that child. I very much prefer it should stand as it is. It is what our people have been accustomed to, and I think especially in our circumstances there is wisdom in the provision.

MR. BROWN of Kanawha. If we provide a school at the public charge, I am at a loss to see the propriety of excluding anybody from it simply because he or she is over 16. If the school is to be on the same expense what difference whether a few more or a few less get in and enjoy its benefits? Especially when those you propose to exclude help pay the tax to support it? It does seem to me this is a school for the children of the State, and as long as they are children, in need of its advantages, they should enjoy its benefits. My own opinion is that the education between 16 and 21 in the common school will be worth five times that amount to children of earlier ages. A person attending after that age studies

in earnest and will accomplish as much in three months as a child of 10 or 12 in a whole year. Why, a young man of 18 or 20 in two years would accomplish a very considerable education. The propriety in my mind is in favor of retaining the section as it is.

MR. HAGAR. My amendment was offered because I was afraid, at first glance the amendment might be sustained. But as the chairman and the gentleman from Kanawha have said it would cut out a great many persons, young men, young women or girls who ought to have opportunity of education in their last days under their parents.

MR. PARKER. I am decidedly for the report as it stands and concur entirely with the remarks of the gentleman from Kanawha. I think the report should be allowed to stand as it is in that respect.

Mr. Hagar's amendment to the amendment was withdrawn, and Mr. Soper's motion rejected.

MR. BROWN of Kanawha. There is no limitation on the tax to be assessed on the property of the State, which is a sum additional to all the other sums here enumerated and may be greater or less as those other sums are greater or less. This provides for taxation by the township. There is one amount assessed on the people, and then a taxation by the legislature for another assessment. I think there ought to be some limitation here beyond which the legislature should not go, and I think in doing that there should be some limitation I cannot perceive here. Suppose a township fails to raise any money by tax. It has a prescribed amount to raise and fails to do it. The other funds having prescribed amounts you already devolve on the legislature the duty of raising the additional amount made necessary by this township default. I do not think, however, the school fund ought ever to bear to the revenues of the State a certain proportion. Whenever it becomes greater than that it will create a burthen, opposition and resistance and finally break down the system. I think we should have some limitation. Suppose we should say "shall not exceed fifteen per cent on the State revenue."

MR. BATTELLE. If the gentleman would turn to the 4th section, he will find in the last sentence of that this provision:

"Any township, city or town failing to raise such annual tax, or any school district failing to maintain a free school therein during at least three months in each year shall receive no part of the school appropriation from the State for the year during which such failure occurs."

That removes one difficulty suggested by the gentleman. In reference to the proposed limitation, I can see no necessity for it. As has been remarked in this Convention all along, and very properly, the legislature are not very likely to oppress the people with burdens of taxation—that is to say, the people are not very likely to oppress themselves. The legislature come fresh from the people year by year, and I would be willing to guarantee, though professing to be no prophet, there never will be any danger of oppressive taxation of this subject by the legislature. The apprehensions, I think, should be, reasonable, all the other way. And besides, sir, I see no reason for any extraordinary taxation on this subject any more than anything else. There may be some grave reason to apprehend that the legislature may inflict burdensome taxations in reference to some local purpose, some public building, for internal improvements (in which works, by the way, the debt of this State has accrued—not by special appropriation). These must always be local, more or less, in benefits. Gentlemen will bear it in mind constantly that this taxation is not for purposes of raising a fund that is to be ubiquitous, that is to go to every valley and come home to your house and almost directly come home to every individual. It is one in which the whole people have more direct interest than any other, and I think the legislature are to be trusted on this question as well as every other question, and that they will not be apt to overstep the bounds of propriety. My fear is that they will much more come under the mark than go over it. But I put the gentleman's own argument in reference to other questions, that we may safely trust the discretion of the legislature on this question, and having put in the power and the requirement in reference to these matters, we may in security leave it to their wisdom.

MR. HERVEY. I move to make the percent named in the amendment of the gentleman from Kanawha twenty-five in lieu of fifteen.

The vote on this motion was taken and it was rejected; as was also the motion of Mr. Brown proposing a limitation of ten per cent.

MR. STUART of Doddridge. I rise simply to make the inquiry whether any one has made any calculations as to what these schools are going to cost. My county has a population of over five thousand—sparsely settled; and this provides for education during three months of each year of all children between 6 and 21 years of age. I am inclined to think that at least one-half of that pop-

ulation is between those ages. Well, sir, if that be the case suppose our county is laid off into four townships. Just put it at a dozen each township. That would be 500 children between those ages. Take 30, which is the greatest you can possibly get together in my county; that would require 16 teachers. Those teachers would be worth I presume $50 a quarter. You could not employ competent men to teach for less than that. That would make for the four townships in my county not less than $3200. And it really does require that because you fix it here so: "sufficient to provide primary instruction in free schools during at least three months in each year." You make it obligatory. I want to know whether the gentlemen have made the calculations and can tell me what it is likely to cost. That would pretty much consume the revenue from my county. I am a great friend of education; but I want to be able to tell my people when I go home what is to be the result, and for this reason I make these inquiries. I am willing to pass this resolution and vote for it, but I want to know how much it is going to cost and where the money is to come from. You would assess in my county $1066 for township and the State would have to give $2132. Well, sir, this is going into it pretty strong; and I want to be prepared to enlighten my people.

MR. POMEROY. How many schools does the gentleman estimate in his county?

MR. STUART of Doddridge. I estimate in my county there will have to be at least 64 schools, I don't believe you can get any location where you can get more than 20 children together within any reasonable distance.

MR. BATTELLE. The gentleman knows a great deal more about his county, of course, Mr. President, than I do; but I know something about it, too. He very much over-estimates the number of schools that will be requisite to accommodate his population, and the number of children too. The number of children the gentleman estimates is very much over-estimated I should think. But I might answer the question, however, in a very general way, and what would perhaps be sufficient. It will cost much less than it costs now. That answer ought to be sufficient for the whole. There will be a cheapening of the whole work of education. The people educate their children now—at least try to. They desire to do it at least on the independent system. Where schools exist now, it is on the subscription plan; and the expense of keeping up the

school and paying the teacher, so far as there are any schools now, are more, I take it, than they will be under the new system. Gentlemen must bear in mind as we go along that we are not proposing to lay an expense on the people for the first time in their lives. It is the very thing they have been doing all their lives only in a very irregular and insufficient way; and by this very opening not only are the benefits widely diffused but the whole thing is so systematized that the burdens heretofore onerous and oppressive, will become comparatively light.

But in reference to one or two details suggested by my friend from Doddridge, I may be permitted to suggest that suppose the district prefers to have their three months only, required by this regulation, in the summer, or possibly where the means of carrying on a school are not so ample—possibly in the beginning they may—you might say three months, summer time; for that time a female teacher will ordinarily be employed. Now, gentlemen know very well what they have been in the habit of paying female teachers for teaching a small school. It amounts to a mere trifle and when we come to look at expenses in this practical sort of way, there is nothing very enormous or frightful in it. I am not prepared to go into statistics in reference to the detail suggested by the gentleman but the point is this, that the free school system proposes in effect to cheapen education and improve it; to relieve us of burdens which we have heretofore been accustomed to bear.

MR. STUART of Doddridge. The gentleman should recollect that when he goes to tax people in their townships that every man will insist at least that he shall have a school sufficiently convenient to him to accommodate his children; otherwise you will have a difficulty there. No man will want to be taxed for a school entirely out of his reach. If you go into this general system, you must accommodate everybody; get it within reach of every man. Take the area of Doddridge, some 450 square miles. Now, how far would you have these children go to school? You must consider that the school system you are now proposing cannot be carried on under our free school system; cannot at all; because men will send their children and vote (?) them out. But if he pays for it, he wants the same accommodations with you and me, and it must be in reach of his family, otherwise it would be very unjust to tax him. You see this changes the matter very much. I think if you will take the number of schools I have indicated, you will find in my county you would be bound to have about that number.

You cannot get it any short of that. I have taken one district and put it at a thousand when in fact it is 1250; and I have put the children at 500. I may be mistaken about it but it does strike me that I should recollect about this considerable. We have got to build school houses to accommodate these neighbors, every one of them, because if you tax a man, he must have the same accommodations as every other man has got, otherwise it will operate very unfairly. Now, we are not situated as many of these states that have adopted this system, where their country is all smooth and cultivated and thickly settled. That is not the case here. In many places the families are miles apart.

MR. BATTELLE. There is just one word I want to say and that is this; I beg the gentleman from Doddridge and all the rest here to get out of their minds the idea that all the mountains in the world are in West Virginia. That is not so. They have mountains elsewhere; and they have some mountains of the biggest and the highest where this school system has been and is in flourishing operation. I have seen as high hills over here in Ohio as I ever saw in Virginia. The system has been adapted to hill country elsewhere and I see no reason why it cannot be adapted to the hill country here. It is very clear, however, that complaining will never succeed in bringing it to every man's door.

MR. STUART of Doddridge. It ought to bring it within three miles.

MR. BATTELLE. We cannot provide that it shall build one on every man's farm. This system has been in operation in several of the counties. It has been in Kanawha; it is in Ohio; and I undertake to say that out of sight of the Kanawha river, the county of Kanawha is as rough and as hilly as perhaps almost any of the counties in West Virginia, save and except the immediate mountain range.

MR. DERING. I am a very warm friend of this system of free schools. I desire to see one put into operation in West Virginia as speedily as we can do it under the circumstances; but, sir, the calculations of the gentleman from Doddridge and my own thought upon the subject lead me to the conclusion after having heard what I have, thought as I have on the subject, that perhaps we are getting a little in advance of West Virginia in endeavoring to inaugurate speedily a free school system. Sir, I think the

time ought to have been a little more distant when it should have been put into operation. When we take into consideration the sparseness of our population, the general condition of our country, that we are just starting as a State and that we will be burdened down with taxation, we may well pause and reflect before we adopt in the organic law of our new State a system which will be so full of trouble and mischief as it seems to me it will if we persist in putting these provisions as provided by this committee. The chairman of this committee has certainly taken a great deal of pains to clothe this pet of his with all the power and authority West Virginia possesses. He is disposed to tax everything to keep up the system, to put a tax on everything almost in western Virginia. I believe as much as the chairman of the committee or any members of it of the necessity of educating our children, of laying a basis of intelligence for the guidance and direction of our little State. While I believe it is all necessary for the perpetuity of our State, its well being and prosperity, I am not willing at this inauspicious period to put into operation a system that will bear down heavily on her people in taxation to the exclusion of almost everything else. Why, sir, as I said, before the chairman of this committee, that committee, is going to pile taxation on taxation in order to provide ways and means to keep up this system of free schools to the alarm of the people; although I do not say as some gentlemen have, that if this provision is incorporated in this Constitution we are going home to go against the Constitution, because I am willing to go for almost any kind of a constitution. But I fear that many of the people of Monongalia will vote against it if you incorporate these provisions. It seems to me it would be better to let the legislature provide for this system. Let them be guided and governed by the people in this matter. Let us not make it a fixed and organic law of the State as to all the ways and means that shall be inaugurated here for the purpose of carrying it out; but let the people think about it; let the legislative body be instructed by their constituents to see what they can bear; let the people mature this whole scheme in their own minds and at the proper time it can be inaugurated and we will finally have a free school system. I believe it would be wise to strike out this whole section; and just say in a few words that the legislature shall provide by law, making it mandatory, the ways and means for a general free school system in western Virginia at no very distant day. It seems to me that would avoid all the difficulties we have had today and leave in the future, and the people will regulate the matter

through their delegates in the general assembly, and we will finally have all that gentlemen ask for in this report.

MR. SOPER. I move to strike out the words "such additional sum derived from taxation on property as shall," in the 30th and 31st lines.

MR. BROWN of Kanawha. I move to amend his motion by substituting "ten" for "fifteen."

MR. SOPER. Some other additional amendments. Then between the 31st and 32nd lines, I insert "school districts in the".

This is undoubtedly an untried system in this State. I apprehend gentlemen will find a great deal of difficulty in getting it properly established, and it is more than probable a great deal of litigation and other controversies will arise. It is necessary we should simplify it as much as possible. The amendment I have proposed will be to this effect; no appropriating of funds to be derived from the several items named in the section without a sufficient sum will be raised by taxation on the districts when divided according to the number of children or when it will be sufficient to maintain a school for three months in the district. That is the effect of the amendment I am proposing. Now that will be plain and perfectly understood. Here you give your district thirty dollars that they can do either by taxation or subscription if they raise the additional thirty dollars, and that sixty dollars if sufficient to pay a school three months. Then they have complied with everything that is required by law. That doesn't prevent the supervisors of the county on the request of the several districts paying a percentage yearly applicable for division among the several districts for school purposes.

Not to go into so much detail, I should very much prefer if we could in a few words set forth the object we wanted to attain and then leave it to the legislature. There is the difficulty I see in this whole report; it is too voluminous. I will prepare my amendment. I have stated its effect.

MR. BROWN of Kanawha. I will be glad if before the gentleman sits down he will state his amendment precisely.

MR. SOPER. I propose to strike out after the word "tax" in the 29th line down to and including the word "shall" in the 31st line.

MR. BATTELLE. Mr. President, it strikes me this takes away

the one support, perhaps the most important support, of the whole system. It gives up the very principle which is of most value in this whole report. The gentleman leaves, as you will discover, "not less than one-half the capitation tax," which is a tax on persons, to be appropriated for the benefit of the school fund; but he strikes out the taxation on property and thereby very greatly defeats the whole design of the scheme. It seems to me it must have that inevitable effect. And I wish to make another remark here in answer to a suggestion of the gentleman. As I said in the beginning of the consideration of this report; if we were now making a constitution in a state that had a regular school system, a few very general provisions, very general and a few of them, would be necessary; but that is not the fact. We are seeking to inaugurate for the first time a free school system in the State here; and we may put in as many general provisions as you please and they will be treated in a general way and ten years hence we will end just where we began. That at least is my opinion, and the opinion of the committee on this subject.

The proposition to strike out, as I said, leaves, what it seems to me, the principle gentleman suggests ought to apply to striking out the capitation tax as well as the tax on property. But, as I was going on to remark before, I don't think that any gentleman can point out in this report as it now stands any restrictions or limitations that need necessarily embarrass the legislature in inaugurating this system. We purposely leave all the details to them. We do not even prescribe the dimensions of the district. That is particularly in the power of the legislature. They can make them large or small, as they and the people demand. We only do lay down the principle that when they receive money from the State for any particular locality, that locality or district must help itself; and we do also establish the other restriction that if any district or school is not kept at least three months in the year they shall not receive their distribution of part of the school fund.

MR. SOPER. How is the legislature to ascertain what that "additional sum" is to be?

MR. BATTELLE. The committee purposes leaving all these details to the legislature. That is one merit of the report. Of course, we cannot pretend, nor can the legislature just how many dollars or cents, to a mill the fund will require. We put in there the general indication of the principle and leave the legislature to work out the results. I cannot conceive how there can arise any contro-

versy or embarrassment in reference to that. The very phrase, the very terms employed here, it seems to me, tend to relieve the question of embarrassment rather than create it. It is very true the legislature may not be able to come at exactly the amount any single town may raise the next year, but it will have to estimate the needs and will have at least some data in what was raised the year before. Legislative bodies often have to estimate the requirements of subjects for which appropriations are made, and they have the means of getting through the officers in immediate charge of any given department the information on which they can base intelligent estimates. But I insist upon it, we are not attempting to make a law for the legislature. We are simply putting in the Constitution the principles that they are to work out and conform to. And when the time comes and the occasion for doing it arrives, it is to be presumed, with these limitations and restrictions, the legislature will be abundantly competent to do it with the guides before them and all round them, to work out this problem. But if the gentleman's amendment prevails, I beg this Convention to observe that you will have nothing better than you have now as means of carrying on your school system. The present Constitution of Virginia provides that one-half the capitation tax shall go to the school fund, and so do we provide here; but the gentleman proposes to stop that—

MR. SOPER. Not at all; not at all. What I propose to get at is that the legislature shall provide by suitable means for the establishment within three years from the adoption of this Constitution for an efficient system of free schools; they shall *only* appropriate for any such schools the interest from the invested fund, the proceeds of forfeitures not otherwise appropriated, confiscations, and fines accruing to this State under the laws thereof.

MR. BATTELLE. They have all that now.

MR. SOPER. And then the balance required shall be raised in the several school districts. The legislature will direct that the money shall be distributed equitably among all the children within the State, and if it falls below $30 to a district the districts must raise the additional thirty dollars and that will maintain a school in the district three months.

MR. BATTELLE. Indulge me a moment. In other words the gentleman proposes to take just about the fund that we have now under the present laws of Virginia and then to couple with that

the mandate to the people in all the districts and townships that they shall go to work and of themselves and for themselves get up a school. The difference between his plan and that of the report is just this: the report proposes the ways and means shall be provided by which the legislature shall extend an amount worth while to these people as an inducement to help themselves and each other; to receive on the condition that they do help themselves. The gentleman proposes simply to give out to them this pittance—for it will be nothing but a pittance; issue to them in the Constitution here a mandate to provide and keep going their schools themselves. In other words it is a constitutional requirement to the people in the various counties, the best way they can to establish common schools and support them the best way they can. It seems to me that is the result of the gentleman's suggestion; for the available means he leaves here for appropriation by the legislature are nothing but what has been appropriated all along—almost nothing more. I do hope the Convention will not adopt that.

MR. BROWN of Kanawha. The gentleman from Tyler proposes to strike out "and such additional sum derived from taxation on property". I propose to amend that by inserting after property: "not to exceed ten per cent of the State revenue," and I wish to say a word or two on that subject. We are making a new system. It is not very well understood by any of us I think. We are striving in the dark for facts and figures to enable us to act discreetly; and I presume it can hardly be found in the compass of the United States a deliberative body acting on an organic law on so important a topic, to which they are strangers, with as little information as this body possesses. Now what ought we to have to act wisely? We ought to have schedules of the property of the State; the assessment of the State; ought to have the number of children and know the number of the square miles of the State, to know how you are going to raise the money off that property to carry on and conduct these schools. If I understand the gentleman from Ohio this report proposes a constitutional requirement on the legislature to do a certain thing, however well nigh impossible it may be to do it; that it is a positive and explicit requirement upon the legislature to raise such an additional sum derived from taxation on property as shall, with the sums raised from other sources for school purposes as necessary to establish and maintain schools. Well, now, we may all desire to do a great many things but the

question is, have we the ability to do it? If we have not how near can we come to it? I have no experience to enable me to judge the operation of this thing all over the State. I have a little nucleus around home on which to predicate some notions respecting its operations elsewhere; and I can say very candidly that the gentleman from Tyler has stated but half the truth relative to the difficulties that will be found when you undertake practically to put this system in operation. The difficulties of every system are very great and of this peculiarly so. But then all these difficulties may be to some extent overcome, or what cannot be overcome may be borne in order to obtain a greater good. The question is here whether this constitutional requirement on the legislature to come up to the mark and levy on the people taxes sufficient and necessary to answer the demand here stated should be put in the Constitution. The State of Virginia with all the literary fund has some two millions dollars, and the annual distribution for the whole State of Virginia is $80,000.

MR. PARKER. I have conversed with Colonel Smith since dinner, and he says that in 1833 the interest of the literary fund was $72,000. He says it is now about double that sum.

MR. BROWN of Kanawha. We, the code just appropriates the sum of $80,000. I looked at it last night. There may be some other provision, but if so I do not know where it is. But in the code of '60 there is the constitution of '52, and it has got up to $80,000. Take it at 15 per cent of the State revenue, you will have some $75,000 added to the sum raised from other sources. I imagine when you come to put this $75,000 on those people, they would bear this if you don't go into the townships and tax them 25 per cent. But what I am prescribing is this: if you require the legislature to levy a tax and also require them to make requisition on the townships to come up and make up the deficiencies, you will kill the goose that lays the egg.

I believe the very utmost the people will endure is a State tax in addition to this school fund; and this, mark you, is an addition of one-half to the old tax. I say therefore to the friends of this measure I believe it is the part of wisdom to go with me and vote of that mandate not exceeding ten per cent as the ultimatum that the legislature can be allowed to raise in addition to all the other funds that are to be raised in the country.

MR. BATTELLE. I would call the gentleman's attention to what

I suggested before, that I think he has failed to show any reason why there should be a constitutional limit on the discretion of the legislature to determine the amount of this taxation. They will be better judges of what is required, of what is necessary for the schools and best for the people, than we are. The gentleman has failed to show that the judgment of the legislature is not as good in reference to the care of the common schools as any other of the objects entrusted to them. Of one thing we may all be assured, that the legislature will never lay a tax for a dollar which they are not driven to by their convictions of its absolute necessity. But they will be the best judges of what is best to the end we seek. We only propose to leave a discretion to the wisdom of the legislature, who are the representatives of the people. The same argument that they ought to be limited will apply with equal force to every other subject of taxation in the State.

The gentleman it seems has failed to observe another provision here in reference to this local taxation: "each township, city, or town shall be required by law to raise annually, by tax on persons and property for the support of free schools therein a sum not less than one-half" of the amount received from the legislature. Now, if the gentleman sees there is danger liable to grow out of the requirement of the legislature to appropriate the funds of the people to these townships; if we see there is about to be a disproportion between them, the proper course, it seems to me, at least, would be for them to propose to change this lowest limit in reference to taxation in the townships. But the legislature may provide for all that there is here to the contrary that the townships raise an equal amount with that they receive from the legislature. The provision is here that they be required to lay a tax "not less than one-half" that received from the legislature. The legislature will have it in its power to provide that this shall be equal instead of one-half the amount received; that they shall raise, in other words, an amount equal to what they receive from the legislature. It seems to me to accomplish the gentleman's object, that would be the way to get at it. But without pretending to say whether ten per cent on the revenues of the State is too much or too little I am opposed to the principle of fixing that limitation in reference to this particular fund. That is the point. I am willing to leave this to the discretion of the legislature and to the wisdom of the people themselves, whose wishes the legislature will be prompt to respond to. I do not share the gloomy apprehensions of some gentlemen that the people of West Virginia will not be

willing to pay taxes for schools. I believe once they enter on the new career opening to them, they will be not only willing but eager to bear all the burdens that will be necessary to open to their children the new world of enlightenment which the public schools will bring to them. As I said once before, I see much more danger that the legislature is apt to make exorbitant appropriations in reference to merely local objects than in reference to this which is a general one. But we want to leave them free to respond to the wishes of the people if it should prove that the Jeremiahs of this Convention have been mistaken about the feeling of the people themselves.

MR. BROWN of Kanawha. I wish to call attention to the fact that some of the heaviest inequality will fall on counties not represented here. Greenbrier pays more revenue than any county in this State and has a population of perhaps a third less than several. Preston has a population of twelve to thirteen thousand and pays a revenue of fifteen thousand dollars, while Greenbrier with a population of ten thousand pays a revenue of thirty thousand dollars, net revenue. You make a distribution between them and you see whether the inequalities will operate, that the more you increase the fund by State tax the more you throw this inequality over the people. Now I do not see that the revenues for the school system should be so raised as to make the distribution of the tax burden so unequal between counties of different classes.

MR. STEVENSON of Wood. I have listened very attentively to what has been said in favor of this amendment; but confess I am not able to see, although I admit the difficulties, how the adoption of this amendment will obviate these difficulties. If you leave the matter of taxation on property without any limit and leave that to the good sense of the people and the wisdom of the legislature, they will equalize it even better than this ten per cent limitation. I think I see there an argument against the amendment. As a matter of course, we have not the data here on which to make nice calculations, and this is another reason why I am opposed to saying the legislature shall not assess a tax beyond a certain per cent, because we do not know but to carry out the object of this Convention it may be necessary to go above that though it may not be necessary to go up to it. I do think it probable that in the course of a few years a much less amount will answer the purpose.

In regard to this inequality of taxation, since I heard the argument of the gentleman from Kanawha I have become a con-

vert to his doctrine of *ad valorem* taxation. I have come to think now that is right (Laughter). And I think we should apply it in this case. If a man pays three dollars in the city of Wheeling on property which he has and another man in McDowell pays only one dollar on his property, I suppose that in the *ad valorem* principle, a tax on property according to value, and why shouldn't it be taxed on that democratic principle, to raise a school fund just as well as to raise funds for any other purpose? I only want to point out to my friends here that sometimes these principles do not apply exactly alike in different cases; not always just as we would like to have them. It does seem to me that is the *ad valorem* principle of taxation carried out precisely. Those parts of the country that are improved and have wealth, require more legislation; the State as a general thing has to do more for them; probably has done more for them, and they will expect it to do more; and therefore their property is worth a great deal more than parts that are unimproved. Now, why should not they pay more for it? That seems to be a correct principle although it may appear a hardship. Yet it is not, at all; because this is the principle on which you tax them for everything else that goes into the general treasury. I do not see that this amendment removes the difficulties suggested by the gentleman. I think it will not operate so justly as the present provision, because this leaves the matter almost entirely to the discretion of the legislature as they shall be instructed at the time by the people of the State. It may be it will be seen at some time that it will be for the general welfare; and you may rest assured the legislature will be a better expression of opinion at that time than any provision we can insert here, will be applicable to the condition of things that may exist then. I was going to say something about the calculations made by my friend from Doddridge; but I believe the matter is not before the Convention.

MR. STUART of Doddridge. This is not left a discretionary power with the legislature but we say that they shall do so and so; that they shall appropriate a sufficient amount derived from taxation on property to keep up the schools at least three months of the year, for all children between certain ages. My candid opinion is that if you say this it will take at least 50 per cent of the State revenue that is now assessed; and the legislature must do this if you require it.

MR. LAMB. I paid my tax bill the other day, and according to

my recollection, if I have not forgotten the figures, I paid for school purposes 140 per cent of the State revenue. For every 40 cents of State revenue, I paid 56 cents for school purposes, in the city of Wheeling.

MR. STUART of Doddridge. I don't doubt that. But, now, are our people prepared for that thing, under the general pressure of things, to say that they will pay 50 per cent of their State revenue for the purpose of educating their children? I say now, if you adopt this as it is you give the legislature no discretionary power, but you say they shall do it. I am, with the gentleman from Kanawha, in favor of limiting the property tax to ten or fifteen per cent. I think that is as high as we ought to go. I am decidedly in favor of his amendment; and while gentlemen refuse to let the legislature fix all the details of this system, if they refuse that I am for limiting the taxation of the people in reference to it. The incorporation of this limit will commend this system to our people. The whole system is new to the people of West Virginia; and if you incorporate this provision letting the legislature go on and tax without any limit you will scare our people so that they will be opposed to the system and opposed to the whole Constitution I fear, many of them. By adopting this limitation, we harmonize the Convention on this principle, we say that our people shall not be taxed to exceed ten per cent on the State revenue; that this will commend this system to the people. I don't want this report to be rejected in toto by this Convention, and I cannot vote for its adoption without some limit on the power of the legislature in reference to taxation. I am for carrying the benefits of education to every cottage and every log cabin, every hill and dale in our land; for I believe no good government can long exist unless based on the intelligence of the people. Let us then commence carefully. We are in our infancy. A new state will soon be launched on the waters, as I trust, we have our state government to keep up. We will have a tax to pay to the general government; our public buildings to build, and we will have various expenses to incur that will deter our people from embracing anything that will give increased taxation. They would sooner put up with the old system with all its imperfections than take on themselves a system that would incur additional heavy taxation. Let us then adopt the principle of the gentleman from Kanawha. Let us crawl before we leap and run. I am decidedly in favor of the amendment.

I am in favor of the amendment and withdraw the amendment

I proposed and accept that of the gentleman from Kanawha.

MR. BATTELLE. It should be borne in mind that the school system in this State is a separate and distinct system. They keep a school going the year round, and as members of this Convention know who have seen any of their houses they are very costly. The amount of tax then, in comparison, to keep our system going, ought not to alarm gentlemen I hope by its economy.

With my present lights I shall regard the introduction of the amendment of the gentleman from Kanawha as equivalent to utterly crippling the whole scheme. It would be in my estimation comparatively valueless.

MR. POMEROY. I hope we will adjourn, Mr. President. It is about time for a vote. I move to adjourn.

The motion was agreed to and the Convention adjourned.

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XLI. WEDNESDAY, JANUARY 29, 1862.

The Convention was opened with prayer by Rev. Joseph S. Pomeroy, member from Hancock.

The President stated the question before the Convention as being on the motion of Mr. Brown of Kanawha to limit the tax which the legislature might lay on property for the support of free schools to ten per cent of the amount of such taxation for State purposes.

The question was put and the amendment agreed to.

MR. BATTELLE. I now wish to offer, if the Convention please, a substitute for the second, third, fourth and fifth sections of the report. I will read it and the Secretary can then report it:

"2. The legislature shall provide, as soon as may be practicable, for the establishment of a thorough and efficient system of free schools. They shall provide for the support of such schools by appropriating thereto the interest of the invested school fund; the net proceeds of all forfeitures, confiscations and fines accruing to this State under the laws thereof; and by general taxation on persons and property, or otherwise. They shall also provide for raising in each township, by the authority of the people thereof, a sum not less than one-half the amount required for the support

of free schools therein. They may further provide whenever they deem it expedient for the election of a state superintendent of free schools and such state or township boards of education, not specified in this Constitution, as may be necessary to carry out the objects of this article."

THE PRESIDENT. The rule is taking up by sections, but we can only substitute for one section at a time.

MR. BATTELLE. We are about to take, as I understand, Mr. President, the vote on the second section, and I offer it now before we do that, with the presumption also that it may be regarded as a substitute for the remaining sections which I have specified. I move the rule be suspended.

MR. SINSEL. You can just offer this as a substitute for the second section, and then ask to have the others taken out.

MR. BATTELLE. I will take the course indicated by the Chair.

The motion to suspend the rule was agreed to.

MR. BATTELLE. I wish to say in regard to this substitute that it is a kind of compromise, so far as I understand it meets the views of gentlemen who are desirous for the establishment of free schools. Well, I suppose everybody in the Convention is desirous of that, but of the framers of this report in all material points, and it concedes at the same time the objections urged here yesterday by the gentlemen on the other side of this discussion. For example, instead of providing, as the 2nd section now does, that the legislature shall provide for a system of free schools without any discretion at all within three years, we say so soon as may be practicable. I think perhaps that extension is due to our peculiar circumstances; I think perhaps it is wise to make that concession. But, on the other hand, we retain the application of the funds specified for the purpose indicated, and that is to my mind the most vital point of this report. I would be glad to have the Secretary report the substitute again.

The Secretary did so, reading with some difficulty.

MR. BATTELLE. The chairman of the committee writes a most miserable hand. Let me make an apology for the Secretary.

MR. POMEROY. This is a substitute for the 2nd section of this report. I could cheerfully vote for it, but I cannot conceive that the provisions made for the 3rd, 4th and 5th are anything like as good as those in the report of the committee. In the 5th sec-

tion there is provision made on the adoption of which or something similar depends the whole efficiency of this system. If you don't have a state superintendent and county superintendents and township boards, you may as well have no school system whatever. And I am opposed to leaving that to be acted on by the legislature. The result will be that the people will contend that they are paying their money while the schools are under no system of regulation whatever. In all those states where the common schools system is adopted the superintendent receives but a small compensation. So county superintendents and township boards receive no compensation at all; but they are elected by the friends of education in the townships and take charge of school matter. Because they do this the schools are carried on with interest. I think it would be better far to let this be, and substitute for the second section, the only one in regard to which there appears to be any controversy. But I don't see how any man who is in favor of the system at all can be opposed to this 5th section. What does it say? (Reading.)

"5. Provision shall be made by law for the election, powers, duties and compensation of a general superintendent of free schools for the State, whose term of office shall be the same as that of the governor, and for a county superintendent for each county, and for the election in the several townships by the people of such officers not specified in the Constitution as may be necessary to carry out the objects of this article and for the organization, whenever it may be deemed expedient to do so of the State Board of Public Instruction."

This section is a very good one, and I am disposed to think unless a man is opposed to the whole system altogether he could raise no objection to the 5th section. He could not on the ground of pecuniary considerations, because the legislature will determine whether these men will receive compensation or not. I think one wishing to see a good system of schools carried into effect here would be opposed to substituting this for the 5th section, against which I have seen no valid objection raised.

MR. BATTELLE. I may remark, Mr. President, frankly that when this amendment offered by the gentleman from Kanawha obtained I regarded the bottom knocked out of this whole scheme contained in this report, and if any gentleman will look at it a moment he will see that it is so. What is the state of the case? We have here in our Constitution by that a limitation on the taxation of property, with perhaps the least show of a capital for a

school fund of any state in this Union. So far as I know, the only single case in the whole Union where a limitation is put on the taxation there on property or persons for the support of schools. I think gentlemen will find that a fact. I beg to repeat it that throughout this entire Union where any provision is made in the constitutions of the states for the establishment of a common school system, there is invariably, either by implication or by express terms coupled with that provision an unlimited power of taxation on persons and property, and that has been done where the school fund provided and accruing from year to year to year is a most munificent fund.

Now, then, we have by this report as amended this state of things in this State, where the capital of our fund is the least of any state in the Union, a provision is introduced in this Constitution alone proposing to restrict taxation on property for school purposes. We have that anomaly, and so far as I know it is without precedent anywhere in the history of our country.

As I have said, I regard that amendment as destroying the vitality of the whole scheme. Now, how will it work? In the second section we provide that no less than one-half the capitation tax, together with the interest on the school fund should go for the support of schools. Well, now let us make a little calculation. I believe the last returns show that we have on account of the amount of revenue accruing in the part of Virginia which will probably constitute the State of West Virginia, say the sum of $480,000. That, so far as I know, is about the amount of the annual revenue at the last return made of which we have any account. Now, there is no probability that for years to come the annual revenue will from the same sources of taxation amount to that sum; but ten per cent on that would give you $48,000. The capitation tax may be fifty cents or one dollar, at the discretion of the legislature. If they should levy one dollar, then if this report should be adopted with that provision in it, one-half of that tax would go to common schools. Perhaps it would be safe to calculate that we have within the bounds of the new State say 60,000 titheables. That is a very hurried calculation; but with three hundred thousand population I am not very far wrong in that. That would give about $30,000 from the capitation tax. The amendment of the gentleman from Kanawha proposes that the taxation on property shall not exceed ten per cent of the revenues of the State, and this capitation tax, as provided for in our report, and as it probably may be provided for in the report of the Committee on Taxation, will just about

cover that amount; and you leave the school system with its hands tied up so that it shall not pledge one cent beyond this on the taxation of property, and you destroy the efficiency of the whole scheme.

Now, the substitute proposes what I regard as the vital essence of the whole measure. It provides just what every other constitution in the whole land provides, that these schools shall be supported, in the first place, by the proceeds of the school fund as we have been all along accustomed to it; by the proceeds of confiscations, and fines and by general taxation on persons and on property, or otherwise; but, on the other hand it concedes the objections that were urged yesterday that the legislature shall not feel themselves bound to establish within three years such a system of free schools as shall support, in general, a school in every district three months in the year. It concedes that matter of detail to the exigencies of the times and leaves that entirely an open question; and I am constrained to say that I think it wise so to leave it under our peculiar circumstances. Now I ask gentlemen to look at this matter; and I think I have shown that while the substitute is free from the objections urged here yesterday and formerly, while it is free from any objection of running needlessly into detail, it certainly does meet that objection and removes it. It at the same time maintains the very principle in reference to the direction of the funds for which the committee have all along contended and which they deem vital to the success of the plan. I have no objection that not only the 6th section but the 5th should stand as the committee have reported, and strike from the substitute the points which that provision covers.

I may be allowed to say, I suppose, every one feels a little preference for their own reports. It is with some grief that I have seen it about knocked all to pieces, having a somewhat parental feeling in reference to it; and if these details are to be in it they are gotten up about as well as any gentleman could have done it even if he is disposed to try it. My personal preference would be that the 5th section remain as it is. It is indeed necessary, in form or substance, to carry out the requirements of the school system.

MR. POWELL. I propose an amendment to the substitute, in the first line, after the word "provide," strike out "as soon as may be practicable" and insert "within five years." The object I have in view in offering this amendment is to require the legislature to

organize this free school system within a limited time. The way the substitute is, the time is unlimited. They may put it off ten, fifteen or twenty years if they see proper, deeming it impracticable. I think we should require them to organize a free school system within five years, within a definite time, and five years I think gives them a sufficient time.

MR. SINSEL. Here is a thought that has just occurred to me: We have defeated the only proposition of a real general character that has come before the Convention. This system of free schools operates on every section of the State alike and upon the inhabitants according to their wealth. Now, it has been hinted at here that there would be some propositions offered to this Convention to prohibit the State from engaging in any enterprise to carry on works of internal improvement. Now, it does seem to me that the friends of internal improvements have struck a vital blow at that interest by their vote on this question. How can they expect persons who live where we need no internal improvements to vote for any measure that will operate only in a local point of view while they themselves turn around and vote down and destroy a proposition that will act throughout the State in general? Now, I was aware that this proposition of free schools would meet with some opposition from the wealthy part of the community—those that were very wealthy and had no children to educate. Well, now, what is government constituted for? I have no doubt, Mr. President, if the southern states had had a good and efficient system of free schools throughout their whole border that we never would have heard anything of secession. Not a single state where that has been carried on successfully was there anything like secession. You find it confined, in the loyal states at least to those who wished to lord it over the common people. Now, they talk about the intelligence of Virginia. Well, we may have as much natural mother wit as other countries, but it has been my fortune, or misfortune to be thrown amongst soldiers from the different sections of this state, and to my utter mortification I find in almost every instance the soldiers from the free states are far more intelligent and well informed than those from our state. Those who have mingled amongst them cannot help seeing it. While it may be mortifying, it is true. After having voted this motion of the gentleman from Kanawha for ten cents, you would carry on a system of free schools just like the State of Virginia has carried on a system of internal improvements in many respects. Virginia today owes more than

every improvement she has within her borders is worth because that has been made on state account. What has been her policy? In many instances she would commence a grand work of improvement and appropriate just money enough to pay officers to overlook it and superintend it and let the work remain. O, they would say, we must have appropriations to prevent this work from going to destruction. Why, we have been taxed to pay men just to overlook the financing, the works remaining inactive. So it will be with this school system under the amendment just adopted—just money enough to be expended to no use and purpose whatever. Now, ten per cent on the State taxes, how much would that be? Now suppose the Virginia—

MR. HALL of Marion. I raise the question, the motion is not for a reconsideration of the vote.

MR. SINSEL. No, sir; but I reckon I can now show the propriety of adopting this present motion before the house. Unless you permit me to show what you have already done will be inefficient and worthless. Now, if the gentleman can draw these nice lines of distinction I would like to see it laid down. I surely have a right to say that what you have done already is worthless—more than worthless—and that the substitute which we now propose is to correct the error that has been committed.

THE PRESIDENT. The question is really on the propriety of compelling the legislature within five years to establish this system.

MR. SINSEL. We have adopted a provision—

THE PRESIDENT. I was going to remark we have perhaps very little time to finish our work in and gentlemen in discussing all questions would do well to confine themselves as closely as possible to the question at issue. The question raised upon the substitute offered by the gentleman from Harrison is a very narrow one and confines itself really to the propriety of restrictory or compulsion on the legislature to do their work in a certain time. He was rather arguing that the work would not be done.

MR. SINSEL. I would just show, Mr. President, the impossibility of arguing the propriety of adopting the substitute without showing the inefficiency there would seem to me to be, supremely ridiculous. How can I show that this substitute ought to be instituted in place of what we have just adopted?

THE PRESIDENT. The question is not now whether the substituted ought to be adopted or not, but whether the amendment ought to prevail.

MR. SINSEL. That is just exactly what I want to show. That amendment ought to prevail because what we have already done is worthless.

MR. HERVEY. I insist, Mr. President, that the gentleman is out of order. The question is—

MR. POMEROY. This motion of the gentleman from Harrison is merely an amendment to require the legislature to act within five years. After that amendment is voted upon, why then in regard to the substitute I think the gentleman from Taylor will have full latitude, and I for one feel like giving it to him.

THE PRESIDENT. The argument of the gentleman from Taylor would perhaps be in order on the question of adopting the substitute in lieu of the original report.

MR. BATTELLE. I beg leave to suggest, Mr. President, very deferentially to the consideration of the Chair, whether the gentleman from Taylor is not pursuing precisely the course that has been adopted here ever since these discussions opened. Gentlemen get up and talk to us every day by the half-hour on every topic save the question pending before the body.

MR. LAMB. I move the gentleman from Taylor be at liberty to proceed. We lose more time discussing the point of order than we save.

MR. HALL of Marion. I dislike to rise to a point of order, but when I do so I dislike to be placed in an improper position. On several occasions when I have done this, it was with no invidious feelings towards any party. It is very apparent that while his remarks may have been in order on the question of the substitute offered by the chairman of the committee, that they could not have reference to the amendment offered by the gentleman from Harrison; and notwithstanding the remark of my friend from Hancock, I too am for giving persons latitude. But I rise to a question of order with no illiberal disposition but in view of the fact that we do hope to end at some time the business of this body, and we never can do it unless we adhere to the question. It is in no spirit of illiberality but of necessity that I was compelled to suggest that the gentleman from Taylor was not in order.

THE PRESIDENT. The Chair is aware that the gentleman was in idea ranging a little out of order in the address he was making, and that he was making a speech that ought to be made on the question between the substitute and the original proposition. The Chair would remark that he considered it was making so little difference which of the two propositions he was making his speech on that perhaps more time would be saved by permitting the gentleman to go on than by stopping him and in that view he was allowed to proceed as far as he went. If, however, the Convention refuses to extend the privilege, the Chair will take it as an indication that it is the wish of the Convention that the Chair hereafter hold speakers strictly within the rules and will try to govern themselves accordingly. The question is on the motion to allow the gentleman from Taylor to proceed.

MR. SINSEL. I don't ask of this Convention any peculiar privileges. I certainly ask all that is accorded to others. If the Convention think I am out of order, why let them say so and I will be very willing.

Mr. Lamb's motion was agreed to and Mr. Sinsel allowed to proceed in his own way.

MR. SINSEL. I was about to remark when interrupted that probably the Virginia tax payers of this state would not pay more than ten dollars apiece of revenue into the treasury under our present constitution, being about 300,000 inhabitants and that would only raise about $300,000. That would only be really about a dollar to the inhabitant.

Well, now, to levy this tax of ten per cent or ten dollars apiece of revenue, and what our families would pay would be one dollar to the family. Can any one expect to carry on an efficient system of free schools with that amount of money?

In reference to this amendment: the gentleman from Harrison would only be perfecting the substitute of the gentleman from Ohio, which would then fix a definite time and require this to be done within five years. As to that I have very little difference so we have a clause in this Constitution under which if the people hereafter demand a good and efficient system of free schools, the legislature may do it without being trammeled in the manner in which the vote just taken would place them. Because I say here that that vote fixing this sum at ten per cent is worse than no system at all. We had better not say a single word about schools in this

Constitution than to limit the legislature in that way. Now, governments are established for the good of the governed generally. If a work of internal improvement adds to the benefit of part or all the citizens of a state, how much more would a thorough system of education do it? Is not one just as much a state enterprise as the other? Is not the system of education more even of a national character? It is impossible to enslave freemen who are intelligent and well informed. The nations have found little difficulty in enslaving the African race because they had no education at all. I repeat if the friends of internal improvements expect any aid at all in constitutional provisions in this Convention in order to carry them out they must come up to this work of free schools—the free school system of the republic generally uniform throughout every section of the state. The internal improvements that must be made hereafter must of necessity be local. Many localities have all that they really need or desire. I came here expecting to carry out the broad principle of bringing people everywhere upon a level of equality so far as internal improvements were concerned. We have them in our midst; we need no more; but I was disposed to give a constitutional guaranty to those sections that did not have improvements, that they will have them, and I would be willing to be taxed to help to pay for it. But while I do that I shall expect them to come up and lend a helping hand to this institution which will act uniformly throughout every portion of the State.

MR. HERVEY. I am utterly surprised at the line of argument adopted by the gentleman who has just taken his seat. Why, sir, the vote that has just been taken appears to have unsettled his nerves. He has become alarmed, frightened and he uses threats to accomplish his purpose. That is to say, he says to the internal improvement party of this Convention, if there is such a party, "If you don't come up to this work in this case and vote money for schools we will vote no money for internal improvements." Well, now, sir, he will not get any money out of me for internal improvements at this or any other time when the constitutional question comes up. I am not very familiar with the legislation of this state; but I have conversed with men who make that legislation and I have it from the best authority in the world, the evidence of these men that the present deplorable state of finances of this state has been brought about by just such propositions as has been made by the gentleman from Taylor: "if you vote for my bill, I will vote for yours." Those propositions have been piled up and millions of

dollars have been squandered. That is not the kind of an argument to dictate a policy for this Convention. No, sir. He has resorted to some calculations in regard to the question. He has assumed that $300,000 is the amount of the revenues in the new State. Now, why assume it? Are not the reports at hand, and every man can investigate them. I was looking at these reports this morning and you cannot find three hundred thousand dollars in it, nor any sum like it. And my friend from Ohio has run into the same error on that question. The revenues embraced in the bounds of the State is half a million dollars or more. Those counties of Greenbrier, Monroe, Mercer, etc., are absolutely within the bounds.

MR. BATTELLE. My statement was that the amount of revenue derived from taxation in the bounds of the proposed new State was some $480,000 the last time heard from.

MR. HERVEY. That is what I make it, exclusive of licenses, which runs it up to $500,000 or perhaps a little more. But if you include counties lying along the Baltimore & Ohio Railroad you have an additional sum of $180,000. In other words, the revenue of the new State, if it includes those counties on the other side of the Alleghenies will amount to $700,000. That is nigh enough to make a basis of calculation. Now, sir, gentlemen allege that if you lay a tax of ten per cent only upon those revenues, the system of free schools is dead. How much money do you want to carry on a system of free schools in this State?

MR. BATTELLE. If the gentleman please, he certainly is mistaken in his figures. The $480,000 includes the revenues derived from the bounds of the proposed State, licenses and all.

MR. HERVEY. No, sir.

MR. BATTELLE. And my argument is that they will not meet that amount again for years to come.

MR. HERVEY. Well, sir, that is probably a miscalculation. We agree that the revenue is $480,000—say for the sake of easy calculation, $500,000. Now ten per cent on that is $50,000, and I take his own figures as to titheables. He estimated $1 a head would be raised on the titheables, one-half of that to go to free schools, which would be $35,000 more, making $85,000 on this side of the Alleghenies to go to this purpose of schools alone. But, sir, suppose the transmontane counties come in and become part of

this new State, then we have a different calculation. The revenue is then $700,000 and ten per cent is $70,000, with titheables over $45,000, a gross sum of $115,000. Are you going to kill the free school system by appropriating $116,000 in this new State? Kill it dead? Now, sir, I want to know how much money will breathe the breath of life into it. If $116,000 will kill it, how much will make it alive? The gentleman assumes that hereafter in consequence of disastrous loss, the revenues of the new State must diminish. Why? Because of the inability to pay. Now, sir, is not that argument as good against the propriety of levying a heavy tax for schools as anything else? When the gentleman proves that position, he proves mine. If he proves that the people of the new State will by the desolation of war be unable to raise these revenues he also proves that they will be unable to bear this taxation. He assumes that is so. Perhaps it is. I have no objections; care nothing about it.

I think the Convention will not sustain the substitute as offered by the gentleman from Ohio. I take it the action of this Convention will still remain the action of the Convention that stands. And I think further that the sum of either $88,000 or $116,000 is a very heavy sum with which to inaugurate a system of free schools.

MR. POWELL. I hope the vote will be taken on the amendment that I have offered. I don't conceive that the argument of the gentleman last on the floor is applicable to that amendment, and I hope the amendment will prevail. If a free school system is so necessary, which I believe it is and will be so efficient in enlightening the youth of West Virginia the sooner it is in operation the better. Let us then vote on the amendment, adopt it or reject it as the Convention may see proper, and then such arguments as we have just listened to will be in order.

MR. POMEROY. I too hope the vote will be taken, but I have a different view from that of my friend from Harrison. I hope his amendment will not prevail. Why postpone the inauguration of this system five years if it is important?

MR. POWELL. This amendment does not postpone it. The substitute does not fix any definite time; this says they shall not postpone it longer than five years.

MR. POMEROY. I am well aware of that fact. I much prefer the report of the committee fixing three years or as soon as prac-

ticable. It will take at the least calculation five to ten years to get this system fully into operation after the action of the legislature is voted, and why should we postpone it for five years or give them the limit to run five years; for they will very likely do nothing until the time is out. I much prefer the report of the committee. I believe if this whole subject should be postponed a few days until these fogs over the city of Wheeling would clear off perhaps some of the darkness would get off gentlemen's minds and they would see the importance of the school system more than they do now. There is no one thing that will induce immigration into this new State so much as this. When men are about to emigrate one of the first inquiries they make is, where can I educate my children? Can I have the same advantages I have here? I know some men will look to the richness of the soil and not to the advantages of education; but the great mass of them will make the inquiry; and therefore I am in favor of inaugurating this system as the best plan possible, at the soonest period possible.

MR. DERING. Mr. President, I would like to hear the amendment read.

Mr. Stuart of Doddridge called for the reading of the substitute.

The substitute was read and Mr. Powell's motion stated.

MR. DERING. That substitute meets with my approbation most decidedly, Mr. President, and I am in favor of the substitute. I am of opinion that the people from abroad will appreciate our situation and circumstances; that they will understand the difficulties under which we labor, will see the amount of taxation that will be upon us; will see that the country has broken down, and that we are not able to jump into being full grown; and it seems to me to be the part of wisdom to leave it to the legislature who in their wisdom will as soon as they deem it practicable put this system into operation. The legislature will be informed of the will of the people. They will defer to that and be guided by it and by the circumstances as they arise, and thus they can act more wisely than we can now. Why, sir, everything is in the vaguest uncertainty. We are struggling for national existence and to put our State into operation in the midst of a national revolution. That is the central idea to all we do or say—to get a new state first, and afterwards as circumstances may dictate put into operation the various measures that shall promote its prosperity, its wealth and its gen-

eral welfare. It would be the part of wisdom in us to leave this whole thing in the hands of the legislature, who can act understandingly on the subject, and they will as soon as practicable put it into operation. I have no doubt we will all be benefited by this free school system, that it will attract and increase population and we will thereby reap from it the advantages of a development that cannot take place until we get more people. For the next five years I know we will be in a down-trodden condition in West Virginia even if she does arise and get into the Union as a state. It seems to me it will take us at least five years to get a start. We are revolutionizing the whole operations of the State of western Virginia; making a constitution altogether different from the old one, and it will take our people some time to be educated to these new ways. Let the legislature and the people talk over this matter a few years and when they deem it expedient and practicable, and possible, they will put this system into operation. It seems to me, sir, that we ought to leave it to the legislature.

MR. STUART of Doddridge. I hope the friends of this measure will not encumber it by inserting the amendment of the gentleman from Harrison. I am in favor of the substitute; but that would be annulled by the adoption of the amendment of the gentleman from Harrison, and I would necessarily be compelled to vote against the substitute if that amendment is adopted. I am sorry the substitute is not printed, but I hope the amendment to the substitute will not be adopted.

MR. POWELL. I wish to add to the amendment so as to make it read: "within five years after the adoption of this Constitution." I do not regard it as complete without that addition.

I would say, in reply to the remarks of the gentleman from Hancock who is desirous that this system of free schools shall go into operation sooner than five years, that this does not prohibit the legislature from organizing the system at its first session under the direction of this Constitution. On the other hand, if we leave the legislature to choose their own time, it may put it off five, ten or fifteen, or twenty years; and the present rising generation will have passed beyond the age when they could be benefited by the proposed system. I do contend that it is our duty to limit the legislature and compel them to organize a free school system within five years; and if gentlemen think that too soon, let them put it off longer, but let the time be fixed beyond which they shall not postpone. If they find they can organize the system with such school

fund as they have, why let them do it. Don't say they shall do it just at that precise period but that they shall do it within a definite specified time. Because we may have old fogies—those who are longing for a return to the "fleshpots of Egypt" in sufficient numbers to control the legislature through their influence and arguments and other influences they may bring to bear on the legislature, and continue to put it off, year after year, until there may be no system ever organized within the limits of the new State. Let us say, gentlemen, you may go so far but no farther; you must do it within the prescribed period; you must put it into operation within a certain time; and then they will begin to prepare for it. The people will be looking for it to come at that time and will be getting ready for it; and men will be preparing themselves to bear whatever burden it may be.

MR. PRESIDENT. I would be willing for the committee to have placed direct on me, I would be willing to pay almost any sum within my power in order that we may have this free school system in operation. We want it; our people want it, and as soon as possible. They want it immediately; and I believe the people as a general thing would be willing to bear the amount required to put it into operation almost immediately. Then if this Convention leaves it optional with the legislature, it may be years before we have a free school system here. We are leaving already sufficient power in the hands of the legislature. We are leaving them, I fear, a little too much to do; we are leaving them too much latitude. Let us bind them up a little closer. Had they been bound up close years ago, we would not have been in our present position. Virginia would not have been in rebellion against the general government. As the Indian says "white man very uncertain." They may put off this—I was going to say, brightest period of the history of Virginia—for years, that period when a thorough system of free schools is organized in Virginia. I do trust the Convention will not give the legislature such unlimited latitude.

MR. HALL of Marion. Mr. President, I trust that if it is ascertained definitely that from this day to all future time our people are to become so corrupt or so stupid that there is no possibility that they can be represented by men who have at heart the interest, and who have the capacity to know what is the interest, of this people, that we will cease our troubling, save the balance of the money that was appropriated, or at least divide it out, and go home. I have heard so much about this thing that I can reduce

it to no other conclusion but that with us and in us is to cease all virtue and all knowledge and that when we die all posterity is to live on what they have built up like the laws of the Medes and Persians that it may be beyond the power of those who follow to change or move. Who sent us here, and who are we? How did this revolution turn up all the ability and all the wisdom that ever has existed or ever shall exist? We were sent here by whom? By the very persons who will send persons here to act in the capacity of legislators. I know it is a very pretty theme for us to arraign everybody else, because when we cry stop, they have to stop and look at us. Now, we have just as much confidence in the legislatures that will be assembled hereafter under this Constitution, or under any other as I have in the honorable and dignified body here. Just as much, because the very same people that sent us here will send members of the legislature here from amongst them.

MR. SINSEL. Are you confining yourself to the point before the Convention?

MR. HALL of Marion. Yes, sir; if I am not, I will be called to order. If these things be true, that all the legislatures that meet hereafter are to have no sense or no purity, then there is propriety in the motion of the gentleman from Harrison, to make them do it. But then let me ask one question: will you compel them to make brick without straw? Suppose you say the legislature shall do it, and they don't do it, what will you do with them? Will you hang them?

We are acting here now in a matter of the utmost importance, without any data before us, under circumstances without precedent since the days of the revolutionary struggle. We cannot tell what may be our situation tomorrow or a week hence, a month or next year. We do not know what may be our resources. The proposition as embodied in the substitute by the chairman of the committee looks to that condition and requires of the legislature everything we can with propriety. I was glad to see this thing proposed to be left, to some extent, to the wisdom of the legislature; or, rather, to the wisdom of the people, because they will send here persons who represent their wisdom. I was glad the proposition came from the chairman himself. I hail with pleasure anything looking to that and trust we will not trammel it with this amendment, but that we will vote down the amendment and adopt the substitute.

MR. SOPER. I am in favor of the substitute because I am ready to confess that I have not the data before me by which I can form anything like a probable opinion as to the result of the sections as first reported. I should like this amendment read that the system shall be organized within five years as far as practicable the legislature shall put the system into effect.

MR. BATTELLE. It now reads "as soon as may be practicable."

MR. SOPER. Yes, but refer to the amendment of the gentleman from Harrison.

MR. BATTELLE. With the approbation of the gentleman from Tyler, I suggest to the gentleman from Harrison that he modify his amendment to read "as soon as may be practicable within five years."

MR. POWELL. I accept that.

MR. HALL of Marion. I do not want to have it understood that this shall be put into full operation within five years.

MR. SOPER. Suppose that in three years they should see their way to provide for three months schooling?

MR. BATTELLE. It leaves it perfectly open to do so. It does not compel the legislature at the end of five years to have a school any specified number of months but only that they shall provide as soon as may be practicable within five years for the establishment of a thorough and efficient system. It does not fix any status or condition to which these schools must arrive in five years.

MR. SOPER. With that explanation, I hope the Convention will adopt the measure as now presented.

MR. STUART of Doddridge. I object to the modification, because I want to vote for the substitute as it is.

MR. PARKER. The amendment as I understand it is that the legislature shall do it as soon as practicable, but that they must do it within five years.

MR. SOPER. I so understand it, but wish to have it so that at that time they shall appropriate all the means within their power to be distributed for the benefit of common schools. For that reason I am in favor of the amendment proposed by the gentleman from Harrison.

MR. POMEROY. I can cheerfully vote for the amendment as modified, for that meets my views exactly. I can vote for the amendment of the gentleman from Harrison.

MR. VAN WINKLE. There has been no change made from the proposition as written.

MR. STUART of Doddridge. I object to the modification of the substitute, not the modification of the amendment. The amendment of the gentleman from Harrison is to "as soon as may be practicable" and insert "within five years after the adoption of this Constitution."

MR. VAN WINKLE. I do not know but it is a little like the preacher who announced there would be services on that day week, Providence permitting it whether or no. I am rather inclined to favor the proposition as it stands without the amendment of five years or any other limited time; and for this reason, sir. I drew the attention of the Convention yesterday to what might be the probable state of the finances of the new State, and I have seen nothing to change those views. It may under the circumstances in which we are placed take the whole of that time to establish a credit sufficient to have the money we shall necessarily want for the purpose of public buildings and so on. I may be willing to borrow money for such purposes, because these are things which are to be enjoyed by posterity and they ought to be willing to pay for their portion. This difficulty would arise and might be fatal to the scheme if the five years elapsed without the legislature being able, owing to the condition of the State finances, to take one step towards this school fund. Of course all the constitutional provisions we can put in here will not compel anybody to perform impossibilities. If then it gave them an opportunity to pass it by for all the time allowed in this limit, it would be very difficult to get them to work at it afterwards; and standing as it does the obligation would rest on them to act upon it as soon as the circumstances of the State would permit them to do anything towards it. I am therefore rather inclined to favor the proposition as it stands.

I wish to say one word before I sit down in reply to the remarks of the gentleman from Marion a few minutes ago in reference to the supposition that the legislature is or would be corrupt. Now, I have announced my wishes and views several times that the legislature should be relieved from as much of that kind of business as leads to these things as possible. I do not, however, presume

that the legislature is to be necessarily corrupt. But these things expose them to solicitations, solicitations from their constituents, solicitations of those to whom they must look perhaps for further political advancement; from their friends and from other parties; and, sir, a man must be something more or less than human if these things do not tend to operate upon and bias his mind. My object is simply to free the legislature as far as possible from such solicitation, particularly with reference to this proposition. That was one of the objections to the county court, that the men who were to administer justice in the country were subject to these private solicitations with reference to legislative matters in the county; and then instead of requiring a majority of them to act they have elected two, three or four to do the legislative work for the county. If there are any gentlemen here who do not live at county seats, it is the game that is played very frequently at county seats to wait until late in the week until the country magistrates had gone home, and then we could pass what we pleased.

This by the way, sir; but I repeat I favor the proposition as it stands.

MR. BATTELLE. I do not think if this amendment obtains that it will bind the legislature up to an obligation to bring about any specified status in relation to the schools. It only provides that within that time, as soon as practicable, they shall go to work. It is free from the objection urged often yesterday against the scheme; and in reference to one intimation thrown out by my friend from Wood I would say that the legislature—I think this legislature is of that opinion—that the legislature ought not to hold this scheme in abeyance in behalf of any other interest of the State whatever. That is the ground I maintain all the time through this report. They ought not to hamper but be disposed to complete this scheme in preference to any other as being more vital to the welfare of the whole people of the State; and it is just as binding as any other injunction laid on the legislature to provide first for the highest interests of the children of their own people; and merely material facilities like expensive public buildings can wait better than your schools can. Plain accommodations will serve for a few years; but time will not wait for the education and improvement of the rising generation, whose moral and intellectual welfare are immeasurably more vital to the welfare of your State than a costly state house. But still, even if this amendment obtain, as I before said, the Convention will bear in mind that it does

not make it obligatory on the legislature to perfect the school system within the time set to any specified status. It is only that they go to work, and at once, and that the system shall be as nearly perfected as practicable within the time named. And now I would ask it as a favor of the Convention without any desire whatever to create any debate, whether long or short, that they do a little solid thinking on this question.

MR. LAMB. The substitute, if amended as proposed would certainly be imperative on the legislature to establish within the five years a thorough and efficient system of public free schools. I would a great deal prefer the substitute as it originally stood. I think the two phrases are entirely inconsistent with themselves: "as soon as may be practicable" in the substitute while the amendment requires them to do it within five years, whether it be practicable or not. That is certainly the way it reads to me. I would have no objection to it, but if you put in a fixed period the legislature are certain to do nothing until that period ends whatever may be the condition of the country. They will put it off until towards the end of the period, if you have a fixed period there. As to fixing the term of five years, it may be or may not be possible and consistent with the condition of the country that an efficient and thorough system could be established within that time; for that is what the provision would then require. Who can foresee what may be the condition of West Virginia five years hence? So far as it is possible, I would be glad to see the legislature go to work at this at once. If you do stick in the term of five years at all, you will have nothing done, whatever may be the condition of the country, until the end of that period approaches. I would a great deal prefer the substitute as it stood originally.

MR. BROWN of Preston. I am not going to say, Mr. President, but just a word, and then humbug the Convention and make a speech half an hour long. All I have got to say about this matter is that I am in favor of this substitute without dotting an "i" or crossing a "t", and opposed to the amendment of the gentleman from Harrison. I was just talking to my friend from Putnam, and he and I came to the conclusion that we want to get home to celebrate the next Fourth of July at home; and we think if we do that we will have to get along a little faster than we are doing.

The question was taken on Mr. Powell's motion to insert after "practicable" the words "within five years," and it was rejected, the question recurring on the substitute offered by Mr. Battelle.

MR. VAN WINKLE. I wish to offer a further amendment. Instead of the clause: "They shall also provide for raising in each township, by the authority of the people thereof, a sum not less than one-half the amount required for the support of free schools therein," I propose to substitute an amendment which changes the principle of the thing to some extent, and to that I will call the attention of the Convention, and instead of the clause I read, insert this: "The sum annually appropriated shall be distributed among the several townships of the State in proportion to the sums levied by each independently of the State tax for the support of such schools within its boundaries." That is to say, it proposes to leave it optional or voluntary with each township to raise such a sum by township tax without interfering with any State tax that may be laid by the legislature for the purpose; but that each township shall raise such an amount as the people in township meeting may think proper; then that in the distribution of the State fund throughout the townships of the State, it shall be in proportion to the amount levied by the township. The effect of this will be, as I think, to produce some degree of emulation among the different townships as to the amount they will raise. They will say if this fund is to be distributed in proportion to what we do for ourselves we will do a little more; and I think in introducing a new system like this, although it has been very successful elsewhere, that to leave it, as it were, optional with the people of each township to do what they think they can afford to do, will tend to make the system popular with the people themselves. Now, there can be no fear after a few years but what each township will do its whole duty with reference to it. There will be some that will understand it from the first who will be willing to tax themselves heavily to get this system inaugurated as soon as possible on a good foundation, a broad and liberal foundation. An adjoining township may not feel so at first, but it will see its neighbor thriving under the system, see its children well clothed and instructed and also have the knowledge that by being a little liberal themselves they would get a more liberal appropriation from the State, it appears they will be induced next year or the year after to raise their own amount. Thus, instead of forcing the people—binding them as a compulsory measure, it will come upon all as a voluntary measure. But, sir, we all know the difficulty of establishing any system of free schools in the western counties here. The population is sparse, and it seemed almost impossible to do anything except by the introduction of the township system. In connection with that system, I

think to place the option with each township as I propose, we shall overcome many of the difficulties that would otherwise be encountered. It is very true there may be some townships whose population is so sparse or the features of the country so, that they cannot immediately erect schools in sufficient number to be of convenience to all the inhabitants but if they cannot, why they will ask, for the time being, a portion of the tax. These townships that are so situated that they cannot to any great extent avail themselves of the benefit of the operation of the plan will not be forced, unless by means of a state tax, to raise money for their townships; and if they will, notwithstanding the disadvantages they labor under feel it as they ought to a solemn duty to have their children educated—if they will be willing to cut off some luxuries and to appropriate a little more money to the schools, they will then get this advantage of aid from the State, and may in that way be enabled to institute a beneficial system for themselves. There is this stimulus, then—this reward: if they will be liberal that liberality will be met with corresponding liberality; and on the other hand they will know that if they are inclined to be stingy about it—if they do not recognize the advantages of education and put their hands in their pockets they will find that he who gives little will get little.

I will not detain the Convention with any further remarks. It changes the principle of distribution. I think the Convention from previous remarks and what I have suggested now will be able to clearly see what it is I desire and vote understandingly on it.

MR. BATTELLE. My first objection to the amendment offered by the gentleman from Wood is this: that he proposes to fix a detail which the substitute, I think wisely, leaves to the legislature, if there is anything in his principle.

MR VAN WINKLE. It is no more a detail than what it proposes to substitute for. One says one-half shall be raised; the other says what amount they please.

MR. BATTELLE. The substitute says not less than one-half shall be raised by the people of the township; and as I said before, the amendment seeks to fix a limitation—it seems to me a detail—which the substitute most wisely leaves to the legislature; and it seems to me it will cause a very unequal operation. In one we will have a system; in another none. In one county there will be schools; in another county, not—at least in the beginning. Along with this plan of raising a state fund, I prefer to leave the whole matter of

levying the local funds to the people themselves, simply granting the power to the legislature to make such necessary provisions as may be requisite on the subject. I do hope the Convention will stand by this feature of the report.

MR. SINSEL. I am opposed to the amendment of the gentleman from Wood for other reasons than those offered by the gentleman from Ohio. To carry out that principle you would just help those who are able to help themselves—injure the poor people and benefit the rich. Here might be a township that might be wealthy. They could raise a liberal amount, and they would divert the whole of these State revenues into their townships and take it away from the poor districts and give it to the rich ones.

MR. VAN WINKLE. I would just ask if the townships raise one-half where is the other half to come from?

The question was taken on Mr. Van Winkle's amendment, and it was rejected.

MR. HAYMOND. Mr. President, I came here as a free school man. I am one today. The committee brought in their report. I would have been willing to adopt that report at a word, and saved all this trouble. I was for raising this State up, sir, with this free school system. I am satisfied, sir, we never can make this a great state until we establish free schools throughout its length and breadth. All states where they have free schools show us that these are facts. But when that report was brought in, I saw the first day the death-blow struck at it—struck to the heart. I so told my friends, it was gone. I now, sir, am for the substitute of the gentleman from Ohio. I had prepared one which is about the same thing. If his fails I shall offer mine.

MR. POMEROY. I should like to ask the chairman of the committee whether he is willing to let this substitute extend only to the 2nd, 3rd and 4th sections. If so, I will vote for it; but if it strikes out all the provisions in the 5th section by which the legislature is to make this scheme take effect, I shall have to vote against it.

MR. BATTELLE. I have no objections to that at all.

MR. SINSEL. I hope you will not let us vote on it as it is. We will put it there.

MR. BATTELLE. The proposition would be to strike out from

the substitute the last sentence in it and except from the matter for which it is to be substituted the 5th section: "They may further provide whenever they deem it expedient for the election of a state superintendent of free schools and such state or township boards of education, not specified in this Constitution, as may be necessary to carry out the objects of this article." The gentleman proposes to leave that out and retain the 5th section which covers the same ground and more fully. The 5th section as it stands now reads:

"5. Provision shall be made by law for the election, powers, duties and compensation of a general superintendent of free schools for the State, whose term of office shall be the same as that of the Governor, and for a county superintendent for each county, and for the election, in the several townships, by the people, of such officers, not specified in the Constitution, as may be necessary to carry out the objects of this article, and for the organization, whenever it may be deemed expedient to do so, of a State Board of Public Instruction."

The Convention, I suppose, now comprehend the idea of the gentleman from Hancock; and I am free to say myself that I think that the 5th provision as it stands is more efficient in its operation and action than the last sentence of the substitute covering the same ground; and if the Convention agree to it, I am willing to so modify the substitute as to leave off the last sentence. I withdraw the last sentence of the substitute.

The question was taken on the substitute with this modification, and it was adopted.

MR. BATTELLE. I move the adoption of the 5th section.

MR. SOPER. I propose an amendment, that "the secretary of the commonwealth shall be the state superintendent of free schools until provision be made by law" to come in at the beginning of the section.

There will be a very little to be done by the state superintendent until this system comes into full operation, and even after it has many years, the secretary of state will be able to transact all the business that will be necessary to give full effect to the system without interfering with his duties as secretary. If it should require an additional clerk, why a small sum may be added by the legislature to his compensation as superintendent of common schools. Now, sir, if we go to work at once and elect one he will want to reside at the capital and will require a sum very near prob-

ably what we are now paying the secretary of state. I think it would be an unnecessary draft on this fund at the commencement. I have known some duties to be performed by the secretary of state and I never knew any additional compensation to his salary over $250, saving a full state officer and salary. I believe in Ohio the state superintendent gets $1200. I am satisfied the secretary of state can attend to all the business necessary without increasing his compensation over one or two hundred dollars for a great many years to come. It is with a view of testing the opinion of the Convention on this subject that I have made this motion, as the section may want some alteration in its phraseology if it shall be adopted.

MR. BATTELLE. I do not think that is the proper place for an amendment of that sort, Mr. President, if it is desirable to make it. It will be observed that this provision does not state when a superintendent of common schools shall be elected. I think the whole power in reference to the matter is with the legislature now. "Provision shall be made by law for the election, powers, duties and compensation of a general superintendent of free schools for the State." It does not say when the provision shall be made; does not say when the duties of the office shall begin. It is possible a superintendent will not be needed for five years, and if so the legislature will not provide for his election till that time, I suppose. So far as anything in the article is concerned, there is no obligation on them to make a superintendent any sooner than is needed; but I think every gentleman here will agree that that officer will be necessary just so soon as the legislature is really ready to go to work in this business; and I think the experience of all who have any familiarity with the workings of school systems elsewhere, or indeed of the operations of government on other subjects is that you cannot very well have one man perform successfully the duties of two offices. To be a secretary of state and superintendent of public schools tacked on to it, he will have functions of one office entitled to his first consideration, while the other will be a kind of gratuity, a matter of courtesy. That is the way it strikes me. Indeed, I don't know but we have a constitutional provision somewhere that no man shall perform the duties of two offices.

MR. VAN WINKLE. Two of a different character.

MR. BATTELLE. Well, these would be of a different character. There is no need to attach these duties to another officer, to be

performed by him in a merely perfunctory way, until the work of a superintendent is needed. When it is needed the legislature is authorized to provide for it. A provision of this kind for the temporary imposition of these duties, before any duties exist, is in any case a detail that has no place in the Constitution; it belongs to the legislature. My own idea is that when a superintendent is needed he will be very much needed; that he will be needed to give his whole time and energies to organizing and starting the system to work throughout the State. The secretary in any event could feel but a slight interest in this work; he could not leave his office to travel over the State to give his personal efforts and presence to it. When the time comes we shall want a man who can do this and put his heart and mind wholly into the work. When the legislature finds the time ripe, they can make provision for this.

But all that I now wish to say about this amendment is that I think it is unnecessary. If the legislature wish to adopt that course, they have the power to do it without any amendment. There is no obligation here to provide for a superintendent any sooner than necessary.

MR. LAMB. I would ask the chairman whether there is to be incorporated, say at the commencement of the section something like this: As soon as may be admissable free schools shall be established and provision made by law for the election of a state superintendent and such other superintendents and boards of education as the legislature shall deem expedient?

MR. BATTELLE. I would prefer—as it strikes me at first blush—the amendment of the gentleman from Tyler. If I rightly comprehend the duties of this officer, he will be a very important agent in helping to get the system on its feet—visiting and corresponding with the county superintendents and in suggesting proper measures in the general interest of the system throughout the State. I would prefer the amendment of the gentleman from Tyler.

MR. SOPER. The very first step the legislature will have to take will be to have some officer at the head of the institution in order to give direction to the several counties and receive reports and make representation to the legislature at its next session. I know of no individual so competent and proper as the secretary of state. Now, sir, the duties of that office are not to be compared with those of the auditor, and he can perform this duty under direction of the legislature until it becomes necessary to have a person devote his whole attention to this matter.

The question was put on Mr. Soper's amendment, and it was rejected.

Section 5 was then adopted, and the Secretary reported section 6:

"6. The legislature shall foster and encourage moral, intellectual, scientific and agricultural improvement; they shall make suitable provision for the establishment and maintenance of institutes for the blind, mute and insane; and, whenever it may be practicable to do so, for the organization of such other institutions of learning as the best interests of general education in the State may demand".

MR. VAN WINKLE. I should like the words "whenever it may be practicable to do so" transferred to the beginning of the second clause. It seems now to make it too imperative.

MR. BATTELLE. I accept the gentleman's suggestion.

MR. VAN WINKLE. The State of Maryland has never provided an institute for the insane, blind and mute. Their insane have always been sent to the States of Pennsylvania and Virginia, I think, on an understanding with those states. The restored government of Virginia have been under the necessity of sending its patients to the Ohio side. Whether it would not be better to say that "they shall as soon as practicable make suitable provision for the blind, mute and insane" and for the organization of such institutions of learning, etc.

MR. BATTELLE. I do not think with the other provision, which I very cheerfully accept, there would be any danger in retaining the rest of the section as it is. We cannot hope to have a complete and thorough system of that kind for many years. We have one institution of that kind now. Whether we will be able to complete it in its present proportions or style, we will be able to make some provision; and with the insertion of the especially qualifying words suggested by the gentleman from Wood, I do not think there is any danger to the resources of the State to be devoted to the classes of persons to whom all our hearts are or should be open. I accept the first modification as offered by the gentleman from Wood.

There being no objection, the words were transferred as suggested by Mr. Van Winkle.

MR. VAN WINKLE. I do not wish to be tenacious about words

but it strikes me that the clause would be more valuable by making it obligatory on the legislature to provide immediately for the care and education of such persons even before they are able to erect an institute of our own. I do not understand by the word "institute" a building but a corps of instructors or a school of our own.

MR. BATTELLE. But would not the greater include the less?

MR. VAN WINKLE. I think not when the greater is so specific, sir.

Well, sir, I will move that they shall "make suitable provision for the maintenance and education of the blind, mutes and insane," instead of the "maintenance of institutes" for such persons.

MR. BROWN of Kanawha. I wish to offer an amendment to the section. I question very much the propriety of the whole section, and if it is to go in, then I wish to add "agricultural and internal."

MR. BATTELLE. I respectfully submit to my friend from Kanawha whether it is exactly courteous now to seek to saddle our poor report here with this great and overshadowing question of internal improvements? Do let us take one thing at a time. Our committee have confined ourselves to the legitimate sphere of our business. That I think all gentlemen will agree. I suppose, however, the gentleman offers this in mere pleasantry.

MR. BROWN of Kanawha. If this were confined to the necessities of the class of individuals alluded to in the 71st line, I should not have offered it. But it looks to a wider range. But it looks to fostering and encouraging intellectual, scientific and agricultural improvement, and I do not see that agricultural improvements stand on any higher ground than internal improvements; because they are so intimately connected that it is difficult to touch one without the other. I confess, with the gentleman, that as respects the unfortunate I feel with him, if he feels at all, that it is the noblest trait or characteristic of any state to make ample, not niggardly, provision for these unfortunates. I confess, sir, that when I have been in the lunatic asylum it made me feel painfully and melancholy; but when I have been in the other for the deaf and dumb and the blind in this State, I have seen large halls filled with these unfortunates and have seen there the development of mind under the education and tutelage of instructors in every depart-

ment excelling in the results of their education, and seeing the provision the old mother state had made for them, I love the old commonwealth and am proud of her for that alone if there was nothing else in her history to bind me to her. I am ready to adopt here and everywhere any proper provision for this class of people; but, then, as I said, there are other and different subjects introduced, and looking to all the varied interests of the State when you embark in so wide a range then I do not see why exclude one of the most important intimately and closely connected with the subject that is introduced. I think therefore the section would be improved by introducing the word "internal," which I indicate, or else striking out all the residue.

MR. BATTELLE. As I intimated before, the committee have carefully confined themselves to the legitimate sphere of such a committee. They were appointed a committee on education, not internal improvements. I grant their provisions here are in general terms perhaps, implying nothing very specific; and I may as well say here that they are quoted from the constitutions of several states of this Union both South and West and North. I believe I found them in as many southern states as in other sections. Agricultural improvement, of course, refers to scientific aspects of agriculture, to affording the means of instruction, so far as may be legitimately done, by diffusing agricultural information; and the whole scope embraced here is confined to education in its special aspects. The gentleman proposes to foist into our report a subject that has nothing more to do with it than a disquisition on China.

MR. DERING. I am opposed to the amendment of the gentleman from Kanawha, because it is anticipating that question before the proper time for discussing it. The committee of which I have the honor of being a member have embraced that subject of internal improvements, and it will necessarily come up when the report of the Committee on Finance and Taxation comes up. Sufficient to the day is the evil thereof. I trust we will not mix up internal improvements with our educational system.

MR. BROWN of Kanawha. After the remarks of the gentleman from Monongalia, I will withdraw the amendment; but I confess very candidly to the gentleman from Ohio that the construction he gives to this is different from that which struck me at first; and I am not sure he could maintain this construction unless per-

haps it is to be found in a report on education. But that the legislature should foster and encourage certain improvements—

MR. BATTELLE. Not "improvements" but "improvement."

MR. BROWN of Kanawha. Perhaps his construction is right, and I will not press it.

The amendment offered by Mr. Van Winkle was agreed to and the section as amended adopted.

MR. BATTELLE. Is it in order now to propose the amendment I proposed yesterday, to the first section?

THE PRESIDENT. In passing over the report a second time, it would be fairly in its place.

MR. VAN WINKLE. I stated yesterday, I believe, that I was opposed to this amendment of the gentleman, but as I think it is better to dispose of it, I move he have leave to offer it at this time. The Committee on Revision, who have this to report back, consider it desirable to have the report given to them as complete as possible. I move a suspension of the rule to enable the chairman of the committee to offer his amendment.

The Secretary reported Mr. Battelle's motion:

To amend the 1st section by inserting after the word "specified," in the 5th line, the following: "The revenues accruing from any stock not pledged to the sinking fund hereafter acquired by this State in any bank; and the proceeds of the sale of such stock if the same be sold."

The question was put on the motion and it was adopted.

MR. PARKER. I have examined it more particularly, the next clause, and it seems to me, to place it clear beyond doubt as we would wish to place it, the amendment should be added in the 7th line.

THE PRESIDENT. The gentleman from Cabell can effect his purpose when we are passing over the report again.

MR. PARKER. I thought it was to go to the Committee on Revision.

Mr. Lamb read the rule in regard to the matter.

MR. VAN WINKLE. The precedent has already been estab-

lished in reference to this matter. The reports as they have progressed and got to the stage that this is in now, have been passed by for this purpose; a copy prepared embracing the amendments and printed again for the use of members. Then they have their second reading, when motions to strike out and insert are again in order. Then they pass to the Committee on Revision. The Convention is then done with them except to supervise the report of that committee. But to give this report our second reading now would be premature. The report of the Committee on Fundamental Provisions was incomplete. It only purported to be a partial report. It was not therefore proper to print that. That committee will present by tomorrow their full report. The report of the Legislative Committee is not completed. The report on County Organization is gone through with, with the exception of the amendment I indicated and asked that it might be passed by. This is the first report that has been completed, to which there is no more to be done as I understand it. The motion properly would be that this report, as amended, be printed and then it will have its second reading, when it will be open to such amendment as may suggest itself on reading. We might have made no objection, but the second reading ought to be a deliberate thing, and after we have had full time to consider the amendments if any are introduced. It is exactly like the second reading of a bill in a legislative body.

THE PRESIDENT. No doubt time would be saved when we have passed through a report if we then adopted it.

MR. PARKER. In that case I reply, most willingly, Mr. President.

MR. POWELL. I move, instead of that, that the report be printed and for the present passed by.

THE PRESIDENT. The adoption of it will send it to the printer.

MR. PARKER. As I understand the rule, after we have been through a report section by section, the question recurs on the adoption of the whole report, and then comes on the right to make the final amendments, so that if it is now ready to go to the house for adoption, of the whole report, why, then, as I understand the rule, now is the time.

MR. VAN WINKLE. The question now is simply whether we are willing to go it blind on this report. Are you willing to take this up when your minds are absolutely confused by the number

of amendments? Is it not better, now that we have gone through the report by sections and amended it, to have it printed as amended and then let it come up on the second reading? This is in accordance with the rule we adopted in the beginning, and it was the intention that the second reading should be a deliberate thing. I trust the Convention will follow the precedent, and that the motion of the chairman to have this report printed as amended will prevail.

The motion to lay the report on the table and print was agreed to.

MR. POWELL. I now move to take up the report of the Committee on the Executive Department.

MR. LAMB. I move we take up the third report of the Committee on the Legislative Department.

MR. POWELL. I will withdraw my motion.

MR. DERING. I offer the resolution I send to the Secretary's table:

The Secretary read:

"Resolved, That after this day no member of this Convention shall be permitted to speak more than twice on the same question, and shall not speak longer than ten minutes the first time and five minutes the second time."

MR. HERVEY. I move to amend that by excepting the chairmen of the standing committees. I will support the resolution. I withdraw my amendment.

MR. BATTELLE. Up to the time of the consideration of the report of the committee of which I am chairman, I think when the proceedings of this house come to be written up, if they ever are, it will appear that I have not occupied on hour first and last of the time of this body prior to the consideration of our report; and I am in favor, both in theory and practice, of short speeches. But I am opposed to this rule. I believe in the right, as a right, of free discussion here, and I am opposed to cutting off at this stage of our proceedings at least, the privileges of any gentleman who may desire to address the house for a longer period than that. It is a matter of taste, about which every gentleman must regulate himself according to his own notions of propriety.

MR. POMEROY. We have a rule already. No gentleman is to speak more than twice on the same subject and only to speak once until all the other members who desire have spoken once. It is true we have not lived up to that. I concur with the gentleman who has just taken his seat, and I am opposed to the resolution because we lose time by it. I do not think there has been a disposition in this Convention to make long speeches. I am certain the operation of this will be just the opposite. Instead of saving time we will lose time.

MR. DERING. I am only doing what they do every winter in the Congress of the United States and every winter in our legislatures very frequently. As the session nears its close they always desire to cut off prolix debate and limiting the time of members, and I think it will be a great saving of time of members if we limit the members hereafter. No gentleman shall speak more than twice. That rule has been frequently violated. Now, sir, I go for sticking it in a resolution that he shall not be permitted to speak more than twice on the same question, and I think 15 minutes is long enough for any member to speak on most any question during the remainder of our session. Sir, I, like the gentleman from Preston, desire to spend my Fourth of July at home.

MR. LAMB. I shall not vote for the resolution, because I think it will embarrass and prolong business rather than expedite it.

The motion was adopted by ayes 28 to 19 noes.

MR. LAMB. I move to take up the third report of the Committee on the Legislative Department. I see the chairman of the Committee on the Executive Department here. If he prefers his report should be taken up now, I give way to that, particularly as some members tell me they are not ready to go into the consideration of the other.

MR. STUART of Doddridge. If there is no motion I move to take up the legislative report.

The motion was agreed to and the third report of the Committee on the Legislative Department was taken up.

"THIRD REPORT OF THE COMMITTEE ON THE LEGISLATIVE DEPARTMENT.

(Submitted January 20, 1862.)

"The Committee having reconsidered so much of their report

as relates to the number and apportionment of members of the legislature, recommend the adoption of the following provisions as part of the Constitution of the State, instead of the 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th sections of the 2nd report:

"2. The senate shall be composed of eighteen, and the house of delegates of forty-seven members, subject to be increased according to the provisions hereinafter contained.

"3. The term of office of senators shall be two years, and that of delegates one year—commencing, in each case, on the 4th day of July succeeding their election; except that the terms of the senators and delegates first elected shall commence twenty days after their election. The senators first elected shall divide themselves into two classes, one senator from every district being assigned to each class; and of these classes, the first to be designated by lot, in such manner as the senate may determine, shall hold their offices for one year, and the second for two years; so that, after the first election, one-half of the senators shall be elected annually. Vacancies, in either branch shall be filled by election, for the unexpired term, in such manner as shall be prescribed by law.

"4. For the election of senators, the State shall be divided into nine senatorial districts; which number shall not be diminished, but may be increased as hereinafter provided. Every district shall choose two senators. The districts shall be equal, as nearly as possible, in white population, according to the returns of the United States census. They shall be compact — formed of contiguous territory—and be bounded by county lines. After every census hereafter taken by authority of the United States, the legislature shall alter the senatorial districts, so far as may be necessary to make them conformable to the foregoing provisions.

"5. The legislature may at any time, by law, divide any senatorial district, by county lines or otherwise, into two sections, which shall be equal, as nearly as possible, in white population. If such division be made, each of the sections shall elect one senator, instead of the district electing two; and the senators so to be elected shall be classified in such manner as the senate may determine.

"6. Until the senatorial districts be altered by the legislature after the next census, the counties of Hancock, Brooke and Ohio shall constitute the 1st senatorial district; Marshall, Wetzel and Marion the 2nd; Monongalia, Preston and Taylor the 3rd; Pleasants, Tyler, Ritchie, Doddridge and Harrison the 4th; Wood, Jackson, Wirt, Roane, Calhoun and Gilmer the 5th; Barbour, Tucker, Lewis, Braxton, Upshur and Randolph the 6th; Mason, Putnam, Kanawha, Clay and Nicholas the

7th; Cabell, Wayne, Boone, Logan, Wyoming, Mercer and McDowell the 8th, and Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe the 9th.

"7. For the election of delegates, every county containing a white population of less than half the ratio of representation for the house of delegates, shall, at each apportionment, be attached to some contiguous county or counties, to form a delegate district.

"8. When two or more counties are formed into a delegate district by the legislature, they shall provide by law that the delegates to be chosen by the voters of the district shall be, in rotation, residents of each county, for a greater or less number of terms, proportioned, as nearly as can be conveniently done, according to the white population of the several counties in the district.

"9. After every census hereafter taken by authority of the United States, the delegates shall be apportioned as follows: The ratio of representation for the house of delegates shall be ascertained by dividing the whole white population of the State by the number of which the house is to consist, and rejecting the fraction of a unit, if any, resulting from such division.

"Dividing the white population of every delegate district, and of every county not included in a delegate district, by the ratio thus ascertained, there shall then be assigned to each a number of delegates equal to the quotient obtained by this division of its white population, excluding the fractional remainder.

"The additional delegates which may be necessary to make up the number of which the house is to consist, shall then be assigned to those delegate districts, and counties not included in a delegate district, which would otherwise have the largest fractions unrepresented. But every delegate district, and county not included in a delegate district, shall be entitled to at least one delegate.

"10. Until a new apportionment be declared, the counties of Pleasants and Wood shall form the 1st delegate district; Calhoun and Gilmer the 2d; Clay and Nicholas the 3d; Webster and Pocahontas the 4th; Tucker and Randolph the 5th; McDowell, Wyoming and Raleigh the 6th. The first delegate district shall choose two delegates, and the other five one each.

"11. The delegates to be chosen by the 1st delegate district shall, for the first term be both residents of the county of Wood, and for the 2d term one shall be a resident of Wood and the other of Pleasants county, and so in rotation. The delegate to be chosen by the 2d delegate district shall, for the first term be a resident of Gilmer, and for the second of Calhoun county. The delegate to be chosen by the 3d delegate district, shall, for the first two terms, be a resident of Nicholas,

and for the third term of Clay county. The delegate to be chosen by the 4th delegate district shall, for the first two terms, be a resident of Pocahontas, and for the third term of Webster county. The delegate to be chosen by the 5th delegate district shall, for the first three terms be a resident of Randolph, and for the fourth term of Tucker county. And the delegate to be chosen by the 6th delegate district, shall, for the first and second terms, be a resident of Raleigh, for the third term of McDowell, and for the fourth and fifth terms of Wyoming county—and so, in each case, in rotation.

"12. Until a new apportionment be declared, the apportionment of delegates to the counties not included in delegate districts, shall be as follows:

To Barbour, Boone, Braxton, Brooke, Cabell, Doddridge, Fayette, Hancock, Jackson, Lewis, Logan, Mason, Mercer, Putnam, Ritchie, Roane, Taylor, Tyler, Upshur, Wayne, Wetzel and Wirt counties, one delegate each.

To Harrison, Kanawha, Marion, Marshall, Monongalia, and Preston Counties, two, delegates each.

To Ohio county, three delegates.

To Greenbrier and Monroe counties together, three delegates, of whom, for the first term, two shall be residents of Greenbrier, and one of Monroe county; and for the second term, two shall be residents of Monroe and one of Greenbrier county; and so in rotation.

"13. If the counties of Pendleton, Hardy, Hampshire, and Morgan become part of this State, they shall, until the next apportionment, constitute the tenth senatorial district, and choose two senators. And if the counties of Frederick, Berkeley and Jefferson become part of the State, they shall, until the next apportionment, constitute the eleventh senatorial district, and choose two senators. And the number of the senate shall be, in the first case, twenty, and in the last, twenty-two, instead of eighteen.

"14. If the seven last named counties become part of this State, the apportionment of delegates to the same, shall, until the next apportionment, be as follows: To Pendleton and Hardy, one each; to Hampshire, Frederick and Jefferson, two each; and the counties of Morgan and Berkeley shall form the seventh delegate district, and choose two delegates; of whom, for the first term, one shall be a resident of Berkeley and the other of Morgan county; and for the second term, both shall be residents of Berkeley county, and so on in rotation.

"But if the counties of Pendleton, Hardy, Hampshire and Morgan become part of this State, and Frederick, Berkeley and Jefferson do not, then Pendleton, Hardy, and Morgan counties shall each choose one delegate, and Hampshire two, until the next apportionment.

"The number of the house of delegates shall, instead of

forty-seven, be in the first case, fifty-seven, and in the last case, fifty-two.

"15. The arrangement of the senatorial and delegate districts, and apportionment of delegates, shall hereafter be declared by law, as soon as possible after each succeeding census taken by authority of the United States. When so declared, they shall apply to the first general election for members of the legislature to be thereafter held, and shall continue in force, unchanged, until such districts be altered, and delegates be apportioned under the succeeding census.

"16. The regular elections for members of the legislature shall be held on the fourth Thursday of May.

"By order of the committee,

DANIEL LAMB, Chairman."

HOUSE of 47—Ratio, 1 Member to 6,477 Whites.

COUNTIES		Whites according to Census of 1860	Quotients	Fractions.	Delegates
1. Pleasants	2,926				
Wood	10,791	13,717	2	763	2
2. Calhoun	2,492				
Gilmer	3,685	6,177	0		1
3. Clay	1,761				
Nicholas	4,470	6,231	0		1
4. Webster	1,552				
Pocahontas	3,686	5,238	0		1
5. Tucker	1,396				
Randolph	4,793	6,189	0		1
6. McDowell	1,535				
Wyoming	2,797				
Raleigh	3,291	7,623	1	1,146	1
Barbour		8,729	1	2,252	1
Boone		4,681	0		1
Braxton		4,885	0		1
Brooke		5,425	0		1
Cabell		7,691	1	1,214	1
Doddridge		5,168	0		1
Fayette		5,716	0		1
Hancock		4,442	0		1
Jackson		8,240	1	1,763	1
Lewis		7,736	1	1,259	1
Logan		4,789	0		1
Mason		8,752	1	2,275	1
Mercer		6,428	0		1
Putnam		5,708	0		1
Ritchie		6,809	1	332	1

COUNTIES		Whites according to Census of 1860	Quotients	Fractions.	Delegates
Roane		5,309	0		1
Taylor		7,300	1	823	1
Tyler		6,488	1	11	1
Upshur		7,064	1	587	1
Wayne		6,604	1	127	1
Wetzel		6,691	1	214	1
Wirt		3,728	0		1
Harrison		13,185	2	231	2
Kanawha		13,787	2	833	2
Marion		12,656	1	6,179	*2
Marshall		12,936	1	6,459	*2
Monongalia		12,907	1	6,430	*2
Preston		13,183	2	229	2
Ohio		22,196	3	2,765	3
Greenbrier	10,499				
Monroe	9,526	20,025	3	594	3
		304,433	29		47

*A delegate is assigned in these cases for the fraction.

RATIO—1 Member to 6,477 Whites.

Pendleton		5,873	0		1
Hardy		8,521	1	2,044	1
Hampshire		12,481	1	6,004	*2
Frederick		13,082	2	128	2
Jefferson		10,092	1	3,615	*2
7. Morgan	3,613				
Berkeley	10,606	14,219	2	1,265	2
		64,268	7		10

SENATORIAL DISTRICTS PROPOSED.

1. Hancock	4,442	3. Monongalia	12,907
Brooke	5,425	Preston	13,183
Ohio	22,196	Taylor	7,300
	32,063		33,390
		4. Pleasants	2,926
2. Marshall	12,936	Tyler	6,488
Wetzel	6,691	Ritchie	6,809
Marion	12,656	Doddridge	5,168
		Harrison	13,185
	32,283		34,576

5.	Wood	10,791
	Jackson	8,240
	Wirt	3,728
	Roane	5,309
	Calhoun	2,492
	Gilmer	3,685
		34,245
6.	Barbour	8,729
	Tucker	1,396
	Lewis,	7,736
	Braxton	4,885
	Upshur	7,064
	Randolph	4,793
		34,603
7.	Mason	8,752
	Putnam	5,708
	Kanawha	13,787
	Clay	1,761
	Nicholas	4,470
		34,478
8.	Cabell	7,691
	Wayne	6,604
	Boone	4,681
	Logan	4,789
	Wyoming	2,797
	Mercer	6,428
	McDowell	1,535
		34,525
9.	Webster	1,552
	Pocahontas	3,686
	Fayette	5,716
	Raleigh	3,291
	Greenbrier	10,499
	Monroe	9,526
		34,270

The white population of the above 44 counties is 304,433, being an average of 33,825 to each district.

10.	Pendleton	5,973
	Hardy	8,521
	Hampshire	12,481
	Morgan	3,613
		30,488
11.	Berkeley	10,606
	Frederick	13,082
	Jefferson	10,092
		33,780

MR. LAMB. It is proper that I should make some explanation —a brief one, of course, after the indications we have had in regard to the pleasure of the Convention, of the changes we have proposed in the system which is indicated in our former report. I would remark, then, in the first place, that we retain the senatorial districts according to our second report and we report an additional provision, by which any one of these districts may be divided hereafter by the legislature into two sections of equal population, each section electing a single senator, instead of the whole district electing two jointly.

We have reported the number 47 instead of 46 for the house of delegates, an increase of one on our former report; and we give

that additional delegate to the counties of Greenbrier and Monroe jointly. We have done so for these reasons: in the first place, the joint population of Greenbrier and Monroe entitles them fully to the representation which we have allotted them in our third report, leaving them a fraction of 594 over. In the next place, because we have taken in these counties without consulting the wishes of that people; have extended our boundary around them without knowing whether they desire it or not; and they are therefore entitled at our hands certainly to the very utmost extent to liberality in the allotment of representation. Lastly because they have nobody in this Convention to represent their interests.

We have changed the delegate districts formerly reported by us in two particulars. We attached Clay and Nicholas together, instead of Clay and Braxton. The connection we are informed is a more natural one. The result, of attaching Clay and Nicholas instead of Braxton is that the population of the district comes nearer the ratio than it was. We have attached Webster and Pocahontas together for the same reason. The result of this change in the senatorial districts is that Braxton gets a delegate by herself instead of Pocahontas and Braxton, and Braxton has a population exceeding Pocahontas by over 1200. She is better entitled therefore to a delegate to herself than Pocahontas. We have reported a provision, understanding that it would be more satisfactory to the members of the small counties by which the delegate to be allotted to the district to which they are attached shall be a resident of the small county for a number of terms proportionate to the ratio the population of that county bears to the population of the district. The objection to these delegate districts heretofore has been that the large county by means of its larger vote could always control the election of the member for the district and the small county would never have, except by permission of the larger a delegate a resident of their county. We have understood this provision would render the system much more satisfactory to the members of the small counties.

In addition to this, we have reported in the third report an apportionment of delegates and arrangement of senatorial districts to Hardy, Pendleton, etc., should they become part of the new State. These are, I believe, the only changes we have found necessary from the former report.

The Secretary read the statement of the committee that the changes they now recommended are in sections 2, 3, 4, 5, 6, 7, and

8 of their second report. He reported section 2 as now proposed as follows:

"2. The senate shall be composed of eighteen, and the house of delegates of forty-seven members, subject to be increased according to the provisions hereinafter contained."

MR. VAN WINKLE. I move to strike out "47" and insert "54", with a view of offering to substitute what is here with my scheme for an apportionment of a house of 54, and such modifications (as at the bottom) as to give to every county having over the ratio whatever that should be, one delegate, and one for every fraction over five-eighths; and to give to every county having less than three-eighths also one delegate, and divide the remaining delegates among the remaining counties not having a fraction of three-eighths, in the same manner as here indicated. I have not prepared that in writing; the members have seen the printed scheme. Instead of giving a delegate for every fraction over one-half of those who have already a delegate I only give it when they have a fraction over five-eights, and instead of giving to a county a further delegate where it is less than one-half the ratio; I give them one where they have a fraction equal to three-eights.

I am not going into the argument which I made on a former occasion, certainly when I know this is a compromise. I think the arguments that I used then and on the discussion that preceded it by myself and others, is fresh in the minds of members, and I will not take up further time, simply asking them to give it a fair consideration not only as making what will probably be held by our constituents as a fair and proper adjustment of the subject at the present time but which will give a rule which no county can dispute is entirely fair and equitable for all future apportionments, and to consider at the same time that if such a rule can be made that we do cut off a great deal of trouble and difficulty hereafter. We are unable to see its practical exemplification here, to see how it works out, but I think there can be no doubt it will produce beneficial results. For that purpose it is necessary the number in the section should be raised to 54, and I submit, sir, that 54 would not make a very large house of delegates, or that 66, if that will better express it, will still not be a very large house. Sixty-six is the largest number that will ever constitute the house of delegates. The difference between 47 and 54 for the 44 counties is small if the results proposed to be attained by the change are desirable, as I think they are, and ought not to stand in the way. I think it will

be very equitable and in future apportionments will be the same.

MR. LAMB. I did not propose to have introduced in the opening remarks I made the objections which exist in the committee to the plan of the gentleman from Wood, not a compromise. The committee, of course, deliberately considered that; they considered the main subject with reference to that; but they came to the conclusion that they could not recommend it to this Convention. I will state as briefly as I can some of the reasons which influenced them to that conclusion. If we adopt the number 54 for the house of delegates, it involves an increase of seven in the delegates allotted to the 44 counties; will involve an increase of nine if the seven counties over the mountains become part of it. This is objectionable to many members of the Convention. Having that number, 54, and distributing it as far as practicable according to white population, which is the principle we have established and the principle by which we profess to be governed, it would allow to Barbour county two delegates, to Jackson two delegates and to Mason two delegates if distributed on the principle of population. Now the gentleman's compromise simply proposes this: he takes one member from Barbour, one from Mason, one from Jackson and transfers them over to other counties.

MR. VAN WINKLE. You give Jackson but one.

MR. LAMB. I know, we give Jackson but one in a house of 47. I am stating what is the effect if you adopt a house of 54 which the gentleman proposes; what is the manner in which his "compromise," as it is called, works out. And that is the whole result of it; to take one member from each of those counties which were not represented in our committee and transfer those three members to other counties. As a matter of compromise, the gentleman's scheme does not affect Kanawha county; it does not affect Doddridge, which were represented on that committee, or any other of the counties that were there represented. But it does affect these three counties by transferring what would be their rights to other counties. Now, do you call it a compromise to take something from those to give to others? We did not feel at liberty to dispose of the proper representation of these three counties by way of a compromise, retaining ourselves our full representation.

There is another objection—it may be an accidental one—to the scheme of compromise proposed by the gentleman from Wood.

I have no doubt it is accidental; and it is this: taking up the senatorial districts, which the Convention will recollect the scheme reported by the committee was very nearly equal in population, the gentleman's plan will give a district composed of Marshall, Wetzel and Marion, 5 delegates; to the district composed of Monongalia, Preston and Taylor, 5 delegates and fraction; to the district composed of Mason, Putnam, Kanawha, Clay and Nicholas, 5 delegates; and 5 delegates and a fraction to a district composed of Jackson, Wirt, Roane, Calhoun and Gilmer, 7 delegates; the population being equal in one case to the other.

There is still another objection to that compromise. According to the gentleman's own figures as printed here the unrepresented fractions amount to over 32,000 in his scheme. According to the plan which is reported here by the committee the unrepresented fractions amount to but 17,400. These two sums express the precise proportion in which one is more equal and more clear than the other. You have in one report—and it is a thing that is inevitable that you must have unrepresented fractions in any scheme—but you have in one seventeen thousand and in the other they amount to thirty-two thousand. These were at least the main reasons why the committee considered the plan which they reported as the fairer one, as in fact more of a compromise than the plan which had been suggested by the gentleman from Wood.

MR. VAN WINKLE. I would like to clear my skirts. The gentleman has announced, as I was not before aware, that this matter would give to my own senatorial district seven delegates and to others but five. Well, now, what was it the Convention wanted to do? It was to do something that would be more favorable to the small counties now, that was the very object of the compromise, to put them as far as possible in a better position than the first report put it. Now, if gentlemen will notice, there are 6 counties in my district; in the 8th district there are seven; in the districts with which he has compared them there are but three counties each. My object was to combine the representation according strictly to the principle of white population with the other idea of a representation by counties. That is to say, that these were the two extremes that were before the Convention, and the compromise must be somewheres between the two. Now if I was willing to yield—if the Convention is willing to yield—something to the small counties, then placing four of those small counties in that district under the ratio—and several of them appear to be

considerably under—of course the rule works out just that way. I proposed here, and if it was put now, I would assent just to take the number of delegates, divide by the number of senatorial districts, assign that number to each senatorial district and divide it between those counties. That would be the fairest but it is not practicable. The numbers in the districts being so unequal they could not be apportioned to the several districts. The same thing applies to those three counties that are mentioned. If we have a rule every county must submit to its operation; and if that rule is fair and just it must work out a fair result. I think the feature in my scheme, as it is called, its principal recommendation, is its getting rid of so many of those delegate districts; for I do know that the people of our county would desire not to be connected with another county in voting. We have adopted, it is true, in reference to these delegate districts something like the principle I suggested in reference to the four small counties that could not have a separate delegate under my system. That is an improvement I admit. But I say again that this last report is no compromise at all. It does not meet the question that they intended to be compromised. And therefore I am still inclined to offer this proposition of mine, the modification I have suggested of three-eighths and five-eighths instead of arbitrary numbers, 3500 and 2500. In reference to the fractions I worked out on the ratio of six thousand in the first scheme, to which 3500 and 2500 have reference and there the fractions amount to but 23,186, or only five or six thousand over the fractions produced by this report and perhaps only proportioned to the additional number of delegates.

MR. IRVINE. Mr. Speaker, the gentlemen here have been defining what constitutes the rule, and they made a distinction between the rule and the principle. Now, the rule and the principle are often synonymous terms. Now, what we call a principle is a rule founded in reason. Sometimes we speak of the reason upon which a rule is founded as distinct from the rule. When we speak of the reason of the rule, we mean the reasons upon which the rule is founded. It is often the case—even oftener the case—that reason and principle mean precisely the same thing. The rule is founded upon reason. Now when we speak of rule and principle as synonymous terms we mean some rule founded in reason. Now what principle have we here to guide us in this case? A rule that is simply arbitrary is no principle. Or a rule that is not founded in reason is based upon no principle. I do not see any

rule here to guide us that is founded in reason, that involves any principle. Even if we, no matter in what sense we use the word principle we mean it is synonymous with the word rule. Then we speak of some rule as founded in reason, or if we speak of reasons on which the rule is founded, there is no reason for this arbitrary rule allowing a member for every 3500. This arbitrary rule does great injustice, and the rule itself is not adhered to, because it is proposed to give—it is an arbitrary rule having no foundation in reason. It is not proposed to adhere to it strictly but to give to Calhoun a member when Calhoun has not 3500 though she approximates very near to that number. This scheme has the effect to distribute the members unequally, I think, throughout this State. I would greatly prefer to fix the number at 47. Though it is an arbitrary arrangement, it approximates I think to what is just and right. The plan proposed by the gentleman from Wood gives to Ohio four members, when many counties that have more than one-third of the inhabitants of that county—considerably more than one-third—are only entitled under this arrangement to one member. Why should you give Ohio four members when other counties having more than one-third of the inhabitants have only one member? There is no justice in this.

Mr. President, I know that if you adopt a rule founded in reason and adhere to that reason that that carries you only as far as the reason carries you. But if you adopt a rule that is founded in reason and adhere to the rule it will never work injustice. There is no rule, unfortunately, in this case here that is founded in reason that can be called a principle, nor any that is founded in reason that I can see, because it works injustice. I do not say that 47 would present upon its face any obvious injustice; but the 54 scheme of the gentleman from Wood presents it upon its face, an obvious injustice, as I say, in giving to Ohio four members when other counties having more than one-third the number have only one member. If we resort to an arbitrary arrangement, I am opposed to resorting to any arrangement that will show injustice on its face.

The hour having arrived, the Convention took a recess.

* * * * *

AFTERNOON SESSION

The Convention re-assembled.

Mr. Simmons offered the following:

"Resolved, that no member failing to confine himself strictly to the subject in debate, the President shall immediately call him to order, and that the Convention shall not permit him to proceed in his own way."

The resolution was adopted.

The Convention resumed consideration of the third report of the Committee on the Legislative Department.

MR. VAN WINKLE. Whether I am to confine myself to the subject or not is between me and my constituents. I offered this morning to strike out 47 and insert 54 and stated at that time that I intended to follow it with an amendment to make the other part correspond. I have now reduced that to writing, which I beg leave to read. It strikes out all that relates to delegate districts in the third paragraph of the 9th section, and strikes out the whole of the 4th paragraph and inserts in its place the following:

"One delegate shall then be assigned to each county having a white population less than the ratio but exceeding three-eights thereof and an additional delegate to each county otherwise unrepresented the white population exceeds five-eights of the ratio. The residue of the whole number of delegates shall then be assigned to the remaining counties in such manner that each shall elect a delegate in alternate years."

MR. STUART of Doddridge. Is that in accordance with the plan drawn out there?

MR. VAN WINKLE. Yes, sir; it produces the same results precisely. The figures taken there are taken on a white ratio, and I find it produces precisely the same result.

MR. STUART of Doddridge. Let us try to stick to the question, otherwise I hope the Chair will carry out the rule adopted. The last report of the committee, Mr. President, that is now sought to be amended, I would say that if the Convention are disposed now to break up that arrangement and go into this question again, with loose range, that we are not going to get through this report for some time to come. I apprehend this report of the committee

brought in here, the reason it was brought in the way it was was because gentlemen wanted to stick so closely to the principle and the rule, as the gentleman from Lewis remarked. Now, sir, if you know the principle and you must stick to that principle, and not deviate from it, permit me to say that you cannot take any plan which will come near to carrying out the principle than the plan in the report of the committee. No way possible. If we do increase the number of delegates it must be for some object. I can only see one good purpose, that of giving each county at least one delegate. If the principle is to be departed from to carry out that object, then, sir, I am opposed to it. Take the report of the committee that is now before us and you will find that the principle is carried out leaving only 17,891 as the unrepresented fraction. Now, we never can come that near on the plan the gentleman from Wood advocated so strongly. I am glad to say that the gentleman from Ohio and his student in figures are good arithmeticians and their figures are good. I am surprised the gentleman from the county of Wood would venture to come in contact when there is so many figures arrayed against him. Now, sir, if you intend to carry out the principle, let us compare the two propositions; we will see which comes nearest. Under the amendment proposed by the gentleman we have an unrepresented fraction of 32,000—double that of the committee. Then, sir, if that is a fact, if the principle must be carried out, we have come nearer it by one-half than the gentleman from Wood proposes to do. Now, that is my view of it. But the principle is not exactly right unless it is to carry out some particular result; and if the principle is to be carried out in order to affect certain localities, then I am opposed to it. Now, if these numbers must be increased because they carried it out on the plan adopted by the committee, I insist the only motive that should induce that increase would be to give the smaller counties at least one delegate. Otherwise, it is only increasing the delegation of the larger counties which have already a sufficient representation, and there is no good use in doing that. The only object in departing from the report of the committee, the only good idea that can be carried out, would be to give to every county at least one delegate. I opposed the principle of this report before earnestly because I thought it did injustice; and I opposed 59, and after much difficulty the matter was recommitted. I felt it my duty to go back to that committee and do the best I could to agree; and while I did not exactly approve of this report as it is, we have agreed to it there as the best we could do. We have gained one

delegate for Monroe and Greenbrier. As it stands, I shall not oppose it. I expect to vote for it as it stands, but I do so at the same time with the declaration that if it shall be the pleasure of the house, then I shall go back again to the number 59.

MR. LAMB. I ask a division of the question, first on striking out 47. If we strike out that number, we will be all at sea again.

The question was taken on Mr. Van Winkle's motion to strike out "forty-seven" and it was rejected.

MR. LAMB. If there is no other amendment proposed, I move the adoption of the section.

MR. HERVEY. I offer as a substitute for the word "eighteen" in the first line, as the number of the senate, the number "twenty-two." I desire to call the attention of the members of the Convention to the substitute I offered on the eleventh of January. I am opposed to double districts if it is possible to arrange it any other way. The question of impossibility is purely a matter of opinion. Why 18 should be adopted simply because it is the number 18 has never been made apparent. If no other number can be found to operate equally properly so as to give a full, free and fair representation, I cannot see why it would not be adopted. I am opposed to the double districts for the reason that if we had nine districts, why we say nine senators. These two senators represent each a district by the report of the committee; each represents a district; which districts reappear on the report of the committee. I cannot see why the number two should be selected to represent those districts any more than any other number. I am opposed to it on another principle. Equality of representation is claimed to be the basis. Now, I maintain that according to the report of this committee it is very probable that in a great many sections of the new State certain parts of these large senatorial districts must inevitably fail of having proper representation. The larger the district the greater the danger of a concentration of influence, a controlling influence in a particular district. Now, sir, if it is possible, or at all practicable to divide these districts, it seems to me that it ought to be done; and if it cannot be done by taking the precise number 18, why not take some other number. When this question was up before it was argued by some members on this floor that there should be some proportion, say two to one or three to one. But they did not know what that proportion should be. That has never yet been tested by this Conven-

tion. I presume, sir, that regarding that matter there is no fixed inflexible rule; but the rights of the case, or the proprieties of the case should control in this question as well as in others. There was a report, minority report, it is true, before with a view of carrying out the principle of single districts; but in consequence of that report having been based on the number 18 it failed to approach anything like equality of representation in the different districts. By changing the number to 22 instead, a diversity of population to the number of (some say) 7,000, as was the case, it has been greatly reduced. The inequalities are greatly reduced. Yet by running out the table to all the counties, taking the number 22, we find these districts are not largely disproportioned in the number of population but sufficiently so for all practical purposes of equality of representation. I know, sir, it is the desire of a large number of the members of this Convention to carry out this principle if it can be done; and I can see no impossibility in connection with it if we come to the conclusion that the number may be changed from the number 18 and increased, say, four. And another fact will be remarked, that while the number is increased four that it will take one county across the Allegheny range, with a population of nearly six thousand (5873). I have done so, sir, with a full conviction of the fact, and the additional assurance of members on this floor who hail from that quarter, and the necessities of those people, which was urged with such potent effect on this floor by members who could not take any question to the people of those counties with the privilege of saying whether they would become a part of this new State. I have therefore felt, especially from those representations, that I would be perfectly safe in taking in the county of Pendleton, on the other side of the Allegheny range, and I have done so. I have done so for the further reason that in the event the county of Pendleton was left on the other side of the Allegheny range, the population, there being some sixty-four thousand, that district would be too large for four senators. The gentleman undertook, in the first place, to run out the calculation at the rate of one senator for every 15,000. The population of those transmontane counties is sixty-four thousand and a fraction; consequently by bringing Pendleton over and attaching her to Randolph and Pocahontas, I have left just population enough on the other side of the Allegheny range to make four senatorial districts. You notice in running over this substitute that a very large number of these districts range about 14,349. There are two districts of 14,460, precisely the same num-

ber. There is an error in the addition of one of these districts—large districts—I do not recollect which one now it is.

I hope, sir, it will be the pleasure of the Convention, if it is at all practicable, to adopt a portion of this report—I mean that portion of the report coming down to the 4th section. I will state that in consultation with one of the gentlemen delegates from Ohio, he deems this last section here a matter of no importance whatever; he does not desire the revision of the 4th section in connection with this report; and I have changed the 22nd district somewhat in consequence of that fact. The 22nd district will read: "The city of Wheeling and Ritchietown," making the 22nd. I did this, sir, for the reason that the delegate from Ohio county says Wheeling does not contain the population which is set down in this report. He states the population in Wheeling does not reach 18,000, but is about 15,000; consequently I make that change in the 22nd district, "city of Wheeling and Ritchietown."

MR. LAMB. I have already, I believe, announced to the Convention more than once that I would prefer single districts if they were practicable. I tried my hand at them and I found it impossible to make any arrangement to present anything like equality and fairness. The gentleman from Kanawha tried his hand at it, and I do not think he succeeded any better than I did. The gentleman from Brooke has tried his hand at it, and I think if you will carefully examine his proposition, you will find that it is just as unsuccessful as the others. In the first place, in order to make out his twenty-two districts at all he has to import one of these counties which are not yet within the limits of the State. The county of Pendleton is included in his first district. You have not yet declared that that shall be part of the State. I therefore regard this proposition as a declaration, so far as the gentleman from Brooke is concerned, that it is impossible to make out anything like satisfactory districts without bringing in some of those outside counties. I hope members of the Convention have also compared the gentleman's scheme with the arrangement for which it is proposed as an alternative. You will find that the counties of this district stretch across the State just touching at a single corner. I could, indeed, have laid out a scheme of separate districts; and if I had supposed it was admissable at all to take a county here and annex it to another away off there for the purpose of getting these districts. The ingenuity of the gentleman from Wood has not been sufficient to devise a scheme for separate districts

that does not (in one instance certainly) adopt that plan of working. The plan, however, proposed by the committee will enable the legislature at any time to divide any of these double districts if the people of the district desire, and to divide it by county lines or otherwise into two sections of equal population; for it will be found that in regard to the double districts which are here proposed a division of them will be impossible if you are confined to county lines; that if the division is to be made so as to secure equality of representation in the two sections of the district into which it is divided, it will be necessary for the legislature to have the power so far to disregard the county lines. We have provision, however, in your Constitution, should it be the pleasure of the Convention to adopt it, substantially to accomplish the object aimed at by the gentleman from Brooke, or by myself, so far as I would prefer single districts, and do perfect justice to all parties.

The proposition of the committee is substantially this: they establish double districts at the outset, but they also report a provision by which the people of any one of these districts can secure its division if they desire to do so, and its division into two equal sections. This is the object of the gentleman that we could accomplish, and that is what is proposed to be accomplished.

In regard to the equality of the districts which have been proposed by the committee, I desire to say a word. Three of the districts which the committee propose will be found to be somewhat deficient in the number of white inhabitants as compared with the ratio; but the whole deficiencies throughout this report will amount to but 3700 taking the whole apportionment together. On the other hand, the excesses in all the districts where there is an excess will amount to 3700.

Now, in regard to the equality of the two propositions, if you will take up the gentleman's proposition for a senate of 22, work out the ratio and compare his defects with that ratio, you will find an excess in a single district equal to all the excesses that are embodied in our plan. You will find in almost every instance much greater variations from the true amount of population than are contained in this plan reported by the committee, except with the plan they have also reported for the election of delegates a fair division of representation is made throughout the State in both houses. Take here the first, second and third districts, which may be called the upper or northern section of the new State; the 4th, 5th and 6th, which may be called the middle section, and the remainder or southern section of the State; you will find when you

apply the delegate apportionment to those sections, that the 1st section has 15, the 2nd 16 and the third section 16, as near as it was possible to divide the number 47. The 1st section, the northern section, is entitled to six senators, and it has a small deficiency of population as compared with the ratio; but what it gains in this way is balanced by its having but 15 delegates while the others have 16. Take it all through, and it works out, I say, in conformity with the principles we have established as nearly as possible, representation according to numbers of white population.

MR. STUART of Doddridge. For fear you will take the statement of the gentleman from Brooke I would ask members to note that if they will try it they will see if they adopt 22 they cannot arrange them; that they are bound to take as his first district a white population that is several thousand short, because he cannot include Pendleton county.

Mr. Carskadon called for the yeas and nays, and the vote being taken Mr. Hervey's motion was rejected by a vote of 8 to 38, as follows:

YEAS—Messrs. John Hall (President), Dering, Hall of Marion, Hubbs, Hervey, Mahon, Taylor, Walker—8.

NAYS—Messrs. Brown of Preston, Brown of Kanawha, Brooks, Brumfield, Battelle, Chapman, Caldwell, Carskadon, Cook, Dille, Dolly, Hansley, Haymond, Hagar, Hoback, Irvine, Lamb, Lauck, Montague, McCutchen, O'Brien, Parsons, Powell, Parker, Pomeroy, Robinson, Sinsel, Stevenson of Wood, Stephenson of Clay, Stewart of Wirt, Stuart of Doddridge, Sheets, Soper, Smith, Trainer, Van Winkle, Warder, Wilson—38.

MR. HERVEY. I move to add at the end of the third line: "but no two senators shall reside in the same county." On that I demand the yeas and nays.

MR. VAN WINKLE. I think that is unnecessary. Every member in the Convention will assent to that proposition.

MR. HALL of Marion. The same object might be better accomplished by inserting in the 20th line of the 4th section after the word "senators" the words "from different counties of the district."

MR. HERVEY. According to the provision of the Constitution already adopted the elections will not take place at the same time,

consequently there being one senator elected at a time that language in that place cannot apply. I prefer the original.

MR. STUART of Doddridge. There will be no difficulty about this matter after the first election, and it seems to me it will result in very little difficulty at the first election. I suppose all the senators must be elected at the same time when our State is first organized. Well, it may be so arranged after that, but at the first I do not see how it can be because there might be counties in which there would be several candidates in the same county. There might be other counties in the district in which there would be candidates also. Well it might happen that two would get a majority who were residents of the same county. I do not see how you can possibly arrange it on the first election. You must say—well, that a county shall not have but one candidate and it would be a question who shall be that candidate, because if you say a county is entitled to have as many as they please it might be two in the same county would be elected.

MR. LAMB. There may perhaps be another difficulty at the first election. Some of these districts, I imagine, in which it may be very difficult to hold an election at more than one county at the first election. It will be somewhat difficult in the 9th district to hold a senatorial election at all. I would be inclined to favor the amendment of the gentleman from Brooke; but as I think it is a new proposition altogether it had better lie on the table and let us think of it.

MR. VAN WINKLE. The same objection would arise on any amendment proposed here. I want to show, if I can, to my friend from Doddridge that the diffculty he finds can hardly arise. He does not advert to the fact that each voter votes for two senators, and in nine cases out of ten they will vote for the same ones. And, again, if it should so turn out that two reside in one county, have received more votes than any others residing in any of the other counties, why, of course, the second one being ineligible, he is passed by and the principle that is sought by the gentleman from Brooke is preserved. I think there can be no fairer proposition than this; whether there is any way to carry it out, let it be established. It is on the very principle introduced in the delegate districts. Gentlemen have complained on this account, that one county would control it. Take a district where there is one large overwhelming county and the rest are small. It may be the large

county will be able to carry the one senator at every election, but it is not so certain. But the other candidates may get together, as it were, among the remaining counties. Even in such an extreme case as that I don't think there will be any practical difficulty. There is no probability it could arise one in a hundred times.

MR. HALL of Marion. If I understand the gentleman from Wood that if the thing should occur the candidate having the highest vote in the district would be elected if another in the same county should be next. You would pass him by and take the next highest in any other county.

Several Members. There is no difficulty—no question—about that.

MR. SINSEL. The way to avoid that would be to say "after the first election."

MR. VAN WINKLE. No more difficulty at the first election than at any other, I think. These things are always divided by party lines in some way; always will be to the end of the world. Well, now, those who make the ticket will take very good care to prevent any such thing as that occurring; and it can be prevented if it is looked to beforehand. It can be prevented, there is no question.

MR. LAMB. It strikes me gentlemen are mistaken as to the manner in which the thing could be worked out. If there should be two candidates from one county both having a larger number of votes than a candidate from another county, according to the established principle in regard to elections, I take it the man from the second county could not be considered elected whether one of the others was eligible or not. I believe that has been an established principle in regard to elections ever since the case of Wilkes. The great objection there was that Wilkes, whom the House of Commons had determined to be ineligible, had a majority of votes; and not satisfied with ordering a new election, the House of Commons declared, finally, that the man who had the smaller number of votes was elected. That decision gave rise to the greatest excitement that perhaps ever existed in regard to any election in England; and I believe that ever since it has been regarded as a settled principle, and the House of Commons were finally obliged to rescind their resolution. I don't know but they expunged it. It has ever since been regarded as a settled principle that if one man

has a larger number of votes than another, the second is not elected even though the first may be determined ineligible. If that is correct the thing could not be worked out in the manner here suggested.

MR. HERVEY. If it should occur once in a hundred times it would not occur 99 times in 100, that is clear. Now, sir, in regard to the manner of holding elections in certain localities, how does it occur that nearly every county in the proposed new State is represented on this floor? Elections were held in much more difficult circumstances than will ever occur again, perhaps, in the history of this new State. In some three or four instances perhaps, they have come in by petition, but in the great majority of the counties of this new State, certainly not one-half the counties embraced in these tables have been prevented from holding elections even at the time of the act of August 20th. Those disabilities are being continually removed. These disabilities did not exist before and they certainly will not to the same extent hereafter. I take it the objection has no foundation.

MR. SINSEL. We have just refused to make single districts. Now, here is another proposition pushed on us that is absolutely worse in operation and principle than the one we have just voted down. For instance, the first district—Hancock, Brooke and Ohio; you compel the people, whether they want to or not, to elect one senator from Hancock with a population of 4442, while Ohio, with a population of 22,196, shall have another one. Now, is not that really worse than the other proposition? I think the inequality is greater. We have been contending here strongly for the best material, that you should pay high prices if necessary for certain fitness in order to get the best. Now, if the people want the best, let them have it. Why compel them to take a man in the county who may not be competent to fill an office under this Constitution? This would compel them to take it, when probably 99 out of every 100 in the district would select a man somewhere else.

MR. STEVENSON of Wood. I would like to hear it read, Mr. President.

The Secretary read Mr. Hervey's motion that "no two senators shall reside in the same county."

MR. STEVENSON of Wood. I was just going to say it would probably be better to say: "no two shall be elected from the same county."

MR. HERVEY. I have no objection to accepting that verbal correction.

MR. STUART of Doddridge. I want to show this Convention that it is more than likely it will happen in a great many instances upon our first election, and I want the gentleman from Wood to attend. Take the district here composed of Hancock, Brooke and Ohio. He says it is not likely there will be two elected from the county of Ohio under this arrangement if the amendment of the gentleman from Brooke is voted. Supposing, as is very apt to be the case and will be, that there will be various gentlemen in Ohio who will offer themselves as candidates. It may be there are two gentlemen in Ohio of nearly equal popularity, of equal qualifications and merits, and the vote will be pretty well divided in that county between those two men. Well, now Brooke and Hancock will have to choose between those men, and it is very likely the same way there the vote will be divided there between those two men, as they stand on equal merits and equal claims before them. Well, here will be two men who will get a vote there and three-fourths of Ohio; and when they come to cast up the vote the man who receives the majority in Ohio and the man who receives a small majority in one of the other counties will be declared senators; and you will disfranchise the man the people want and elect a man they did not want at all. Now, will not that result?

MR. HERVEY. Would an alteration to this effect satisfy the gentleman. "after the first election"?

MR. STUART of Doddridge. I have no objection to that; but I say my opinion is you had better let men and counties stand on their merits, and if a man merits the office and the people choose to elect him, and if he is qualified, don't palm him off on any people simply because he happens to live in a certain locality. I live in a small county, and I have fought for the small counties; yet it does seem to me this is stooping from principle—the principle we have all been fighting for so much and that the gentleman from Wood is advocating so strongly.

MR. VAN WINKLE. I thought the gentleman from Doddridge was very greatly in favor of county representation.

MR. STUART of Doddridge. So I am; but I don't want to see the minority there have the power of electing a senator of West Virginia who shall perhaps receive three or four votes over a man receiving perhaps fifteen hundred who would be disfranchised.

MR. HALL of Marion. This is a very plain proposition, a thing we have all labored to accomplish. The gentleman from Doddridge fought so valiantly and was willing to lay aside every other consideration and principle in order to have a representative from each county. This only seeks to dispose the representation so that as far as possible each part of the district shall be represented with reference to any local interests that may arise—and those things will arise to a certain extent, and minorities are entitled to be represented; and no difficulty can grow out of this matter; and I trust the motion will not be modified at all at the first election. The people generally know something about their candidates and have something to do with arranging who shall be their candidates; and those who are candidates irrespective of pre-arrangement on the part of the people are not generally in the way very much of those who are likely to get a large vote. In the case suggested as to Ohio and Brooke, with the constitutional provision before the people that two senators shall not be elected for the same county, they will arrange accordingly. The suggestion of the gentleman from Taylor that because one is to be elected in Ohio and one in Brooke, that therefore you are placing Brooke on an equality with Ohio, not at all. They will all turn in with Brooke and the people in Ohio will be voting for men there; the candidates will be selected with reference to this very thing. There is great propriety in the provision that is sought to be incorporated here with a view to have representation from the different localities in order to represent local interests and prevent the stronger counties overpowering the weaker and monopolizing, say the county of Ohio to the total exclusion of Brooke and Hancock, and any like cases. That is the very object of that; the object we all labored for; the very principle we have sought to incorporate; and no difficulty can arise out of it. I am really surprised that any one should oppose. I am surprised the opposition should come from a gentleman who lives in a small district and from the gentleman from Doddridge who has been the champion of the small counties and maintained that they needed protection and protected localities in this way. If it did occur the first time it would not occur in any single instance, in very few instances would it occur. I would adhere to the principle though it should become necessary at the first election to order a new election to supply the other senator. I trust the proposition will not be modified and that it will be the pleasure of the Convention to adopt it as proposed.

MR. SINSEL. I did not come here as the representative of the people of Taylor county, to act upon any small and selfish principles such as have been carried out by designing demagogic politicians. I came here to act, as far as I could on principles of statesmanship, on a broader and more national platform. I am aware there is a little county of Taylor, my constituent and home locality.

THE PRESIDENT. The gentleman will please avoid anything personal.

MR. HALL of Marion. Nothing of that kind could be taken as personal.

MR. SINSEL. Surely not intended. It may be, unfortunately, in Taylor that we may not have a very able man there to represent us; it might be in Monongalia or Preston they might have a very able man, a distinguished gentleman, there, fully competent to represent us; and at the election we would vote for such men. I would rather than for a person in my own county unworthy the position.

The question was taken on Mr. Hervey's amendment, and it was adopted.

MR. HALL of Marion. I wish now to say as a personal matter, that it is very apparent because I called the gentleman from Taylor to order this morning, it is evident he has taken offense.

MR. SINSEL. I took no offense in the world at what the gentleman did this morning. I intended none here this evening. Gentlemen thought this thing was a kind of a little compromise, a thing I don't approve of. I did go a little way in regard to the house of delegates in order to satisfy others as a compromise. I did hope when we came to the senate, we would act on broader and more statesman-like principles.

MR. LAMB. I want to see if I understand the amendment now. It was suggested by the gentleman from Doddridge that this rule of apportioning senators could not apply to the first election, and I understood the gentleman from Brooke as acceding to that.

The section as amended was then adopted.

MR. LAMB. There will be no difficulty under this section as it intends nothing but what has been heretofore adopted. But I call the attention of the Convention to an amendment which I think

absolutely necessary. It arises out of the amendment which was adopted to the original section on the motion of the gentleman from Wood; "except that the terms of the senators first elected shall commence 20 days after their election." It will be necessary, in some part of the Constitution, to define when the terms of these senators shall expire. I would move to pass the section as it stands reserving the right of reconsideration to amend it so as to designate when the terms of the first senators shall expire.

THE PRESIDENT. That can be done on the next reading.

The 3rd, 4th, 5th, and 6th sections were adopted as recommended by the committee, without alteration and without discussion.

When the 7th was read, Mr. Lamb said: That section, Mr. President, has been so altered as to make the delegate district system more agreeable to the small counties. Our information was that it would relieve that matter of a good deal of difficulty. It is fair, I suppose, in its provisions. It secures to the small counties the certainty that in proportion to their population they shall have representatives elected from the districts who are residents of their own county.

The 7th, 8th, and 9th sections were adopted as reported.

Upon the reading of Section 10 Mr. Lamb: This is somewhat different from the former report and Clay county is annexed to Nicholas. The district contained a population of 6231. In the former report the county was annexed to Braxton with a district of 6646. That district therefore now contains a little over four hundred less population than before. We were informed that the connection between Clay and Nicholas was rather a more natural one than that between Clay and Braxton. Webster county is annexed to Pocahontas. In this 10th section, it was formerly attached to Nicholas. As it now stands, that district contains a white population of 5238. Before, it contained 6022. By making these changes, Braxton elects a delegate separately instead of Pocahontas, and Braxton county has a population of 1200 over that of Pocahontas. The arrangement therefore, gives the separate delegate to that county which is best entitled to it. Other districts remain as they were in the former report.

The 10th section was adopted, and the Secretary reported the 11th.

MR. LAMB. The assignment, Mr. President, of the terms between the different counties here is attempted to be made as nearly as we could in proportion to their population. Take the second delegate district, for instance: That consists of two counties, Gilmer and Calhoun. Gilmer has 3685, Calhoun 2492. It was impossible to do anything else than provide for the election of these delegates alternately; but in order that some advantage might be given to the greater population of Gilmer, we gave her the first delegate. The delegate to be elected from the second district shall for the first term be a resident of Gilmer and for the second of Calhoun. The third delegate district consists of Nicholas and Clay, and it will be found apportioned on the same principle. Clay has 1761, Nicholas 4470. We have given the delegate for the first two terms to Nicholas county, for the third term to Clay. We give it for the first two terms to Nicholas because the population of Nicholas is more than twice that of Clay so that she may have some advantage for the excess of population. So on throughout.

MR. HAGAR. It seems to me that Wyoming should be entitled to a fair representation. I know a little about that country. It is true she has not elected a candidate for years to serve in the legislature. Wyoming and Logan and Boone together elected a secesh and he went off. I don't now recollect that Wyoming ever had a member in the legislature. She gets one, but it is every fourth year.

MR. WALKER. I move to amend by saying "first and second term to Raleigh, third to McDowell and fourth and fifth to Wyoming." First term to Raleigh, second to Wyoming and then return to Raleigh and then to Wyoming and give McDowell the fifth member. Raleigh is the largest county and Wyoming is the next. McDowell is a very small county. I don't know why McDowell should have the preference to Wyoming. I think it would be nothing amiss to give Raleigh the first, then Wyoming and then return to Raleigh, Wyoming the fourth and McDowell the fifth. It will not alter anything particular more than it will give Wyoming and Raleigh rotation, that one county shall not be represented two years.

MR. LAMB. If the Convention will look closely at the provision which is here reported they will find this result: In the first place, we give to Wyoming the representative as often as we do Raleigh,

yet Wyoming has a population of 2797 and Raleigh 3291. Wyoming here has a great advantage. To compensate that advantage in some other way we have assigned the delegates to the larger county, Raleigh, in precedence to Wyoming. We have endeavored to give Raleigh this little advantage in compensation of its greater population. Now, between McDowell and Wyoming gentlemen will find that McDowell has a white population of 1535, Wyoming a white population of 2797; yet Wyoming is to have the delegate twice as often as McDowell. Twice the population of McDowell would be 3070, considerably over the population of Wyoming. In giving to McDowell therefore a delegate only half as often as we give it to Wyoming we have endeavored to compensate for this difference, this inequality to which we subject McDowell county by providing that she shall elect a delegate before it becomes the term of Wyoming. We have carried this principle throughout of endeavoring to give these small compensations in the arrangements of these delegate districts to those counties which sustain a loss in regard to population. It is a fair principle and in the manner in which the committee arranged these counties I want the Convention to understand that it has not been done at hazard but as we conceived in carrying out a fair principle. We could not give representation exactly according to numbers at times which would be proportioned to population but when any county was subjected to a loss in that respect we endeavored to give them at least the little advantage of having the first delegates.

MR. SMITH. We endeavored to make an equitable adjustment among the counties. That was the object—to make it as near just as possible. Raleigh has more than double the population of McDowell. In regard to all these counties we have considered the advantages and disadvantages of each and adjusted these as equitably as we could.

MR. WALKER. Give the first term to Raleigh, second to Wyoming, third term a resident of Raleigh, fourth term a resident of Wyoming, fifth term a resident of McDowell, and so on.

MR. VAN WINKLE. I believe all three of these counties are represented, but I am perfectly willing if the delegates from all three can agree on any proposition in reference to this I should very cheerfully vote for it. The gentlemen from the other counties I take it would do the same.

MR. SMITH. Make Raleigh first, Wyoming second, McDowell third and Wyoming fourth.

MR. WALKER. I am perfectly willing to accept of the suggestion of the gentleman from Wood. I have no doubt the members present can agree on this satisfactorily.

THE PRESIDENT. The chair would then suggest the idea of passing the section by and on the second reading—

MR. WALKER. I am willing to pass by.

MR. LAMB. I should object to passing by longer than till tomorrow morning.

MR. WALKER. That will be long enough.

MR. LAMB. The object in passing by is to see whether the gentlemen representing those counties can agree among themselves in reference to this matter. If they can agree and present us a different plan tomorrow morning, that of course will be satisfactory and we will all cheerfully accede to it.

MR. WALKER. Then I move to pass by until tomorrow morning.

MR. BROWN of Kanawha. I think this thing can be arranged now as well as any other time. The committee plan to give the delegate first to Raleigh, second to Wyoming, third to McDowell, and then two years first to Raleigh and then Wyoming, and then McDowell comes in; then go back to Raleigh, McDowell, Wyoming. Every five years it works all the way through and can be arranged to suit the gentlemen without violating principle.

MR. WALKER. I would rather pass by.

Mr. Walker's motion was agreed to and the section passed by.

The 12th section was reported.

MR. LAMB. Mr. President, we have here the extra delegate to Greenbrier and Monroe counties. As to the manner in which the delegates are arranged for these counties I can only say that gentlemen who are much better acquainted than I am in that region supposed this would be the most satisfactory.

MR. VAN WINKLE. I should really like to ask why these are not put in with the rest of the delegate districts?

MR. LAMB. There is this peculiarity. The gentleman will have observed this section in regard to the Constitution of delegate districts does not apply except where a county is less than the ratio of representation.

MR. VAN WINKLE. Satisfactory, sir.

The 12th section was adopted as reported, and the Secretary reported the 13th.

MR. LAMB. The Convention will recollect the provision adopted in regard to the boundary question, by which Pendleton, Hardy, Hampshire and Morgan have come in, rendering it necessary to make these provisions. They are a little inadequate, but I think they are expressed so that the effect of them cannot be mistaken.

The 13th, 14th and 15th sections were successively adopted as reported.

The 16th section was reported.

MR. HERVEY. I move to strike out "the fourth Thursday of May" and insert "the fourth Thursday of October." It has been discussed heretofore and I presume it is not necessary to go into detail on this question; but I hope there will be another vote and the day will be changed.

MR. VAN WINKLE. The Committee on General Provisions have ordered me to report a similar provision providing for the time of holding all these elections. I would simply suggest to leave this here and let the whole question be fixed, the day of election and commencement of terms of the different offices when it comes up on that general provision. Members may be thinking of it meanwhile and be prepared for it. That probably will be the fairest way, to let it come up as in that report.

MR. HERVEY. I accept the suggestion.

MR. VAN WINKLE. We may as well pass by.

Section 16 was passed by, accordingly.

MR. VAN WINKLE. I want to offer an additional section, sir, to which I suppose, in the form in which it is stated, there could be no objection. I should like to have the views of the Convention on it at least. I will read it for information:

"The legislature may provide for dividing any county having more than one delegate into as many districts as delegates, each of which shall elect one delegate."

So that if the people of any county under legislative sanction choose to divide it into two districts and each elect one, they can do so. It simply gives the power to the legislature to provide for it.

MR. BROWN of Kanawha. I confess I think that is carrying the doctrine a little too far. It will produce rivalries among them. The county is a unit, and I cannot approve the policy of splitting up counties in order to produce divisions. The very principle on which we advocated unit representation for each county forbids this. It has been the idea that the county is a unit; that it has an organization in which all the county have a peculiar united interest; and to split the counties in two, and if your county has three or four delegates, into as many parts, is I think decidely objectionable.

MR. VAN WINKLE. Why does the gentleman speak of three or four parts when he knows there is but one county that has three and no other more than two? That is not a fair way of arguing.

MR. BROWN of Kanawha. Well, I was not thinking precisely of numbers. The division into towns is as far as I can consent to go. Even on that point I have not my mind fully made up.

MR. STUART of Doddridge. If you adopt this amendment proposed by the gentleman from Wood, you get up little county feuds, and have your legislature eternally legislating to district some county in order to suit some particular person that desires it. I think no inducement ought to be held out to counties to get up anything of this kind. I know exactly how it will operate. Some gentleman will desire to have his county divided up into delegate districts in order to accommodate him or a friend who is ambitious to get into the legislature, and his friends will petition the legislature every year to divide the county in some other form to suit some other individual in some other particular locality in the county. That will be the result of it.

MR. LAMB. I would suggest the following as expressing the gentleman's idea in possibly better form than first offered by him.

"The legislature may provide for dividing any county having more than one delegate into as many districts as delegates, each

of which shall elect one delegate; and such districts shall be equal, as nearly as possible, in white population."

MR. VAN WINKLE. I accept the suggestion, and will ask that the vote be taken on this as an additional section.

The vote was taken and the additional section rejected.

MR. LAMB. I move we adjourn.

MR. STEVENSON of Wood. Wouldn't it be better to understand before we adjourn what report we will act on tomorrow morning? Then the members can look over it.

MR. LAMB. I withdraw the motion.

MR. STUART of Doddridge. There is still unfinished business —the amendment offered by the gentleman from Marshall.

MR. LAMB. The balance of this report will occupy only a moment, or two in the morning; if the gentlemen from McDowell, Wyoming and Raleigh agree, a motion will be as a matter of course to adopt what they agree upon. We had better have some understanding about what should be taken up in the morning.

MR. POWELL. I would suggest that we take up the report of the Committee on Taxation and Finance. The chairman of that committee expressed a desire yesterday that it be taken up and acted on while he could be here; that he would have to be absent in the near future.

MR. LAMB. I know that the chairman of that committee is exceedingly anxious that that report should be taken up and acted on; but I know, also, that it would be impossible for him to be here tomorrow.

MR. STEVENSON of Wood. I notice the chairman of the Executive Committee is present. I will move to take up the report of that committee in the morning.

MR. CALDWELL. I am willing. I want to remind the members of the Convention that I had the honor some days ago to offer a proposition that I desire to be made part of this report. My friend from Wood offered a substitute, and I believe on examination I have no objection to the substitute for what I propose offering; but I merely give notice that I would like to have the thing disposed of in the morning.

A Member. Take it up now.

MR. LAMB. The gentleman refers to the additional section offered to the report of the legislative department.

MR. BATTELLE. Why not take up the amendment of the gentleman from Marshall this evening?

It was agreed that Mr. Caldwell's amendment to the legislative report be taken up; but as that gentleman had mislaid the paper and could not find it, the Convention adjourned.