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PROCEEDINGS AND DEBATES

MAY 27 1940

OF THE

CONVENTION

OF THE COMMONWEALTH OF PENNSYLVANIA,

TO PROPOSE

AMENDMENTS TO THE CONSTITUTION,

COMMENCED AT HARRISBURG MAY 2, 1837.

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Reported by JOHN AGG, Stenographer:

ASSISTED BY MESSRS. WHEELER, KINGMAN, DRAKE, AND M'KINLEY.

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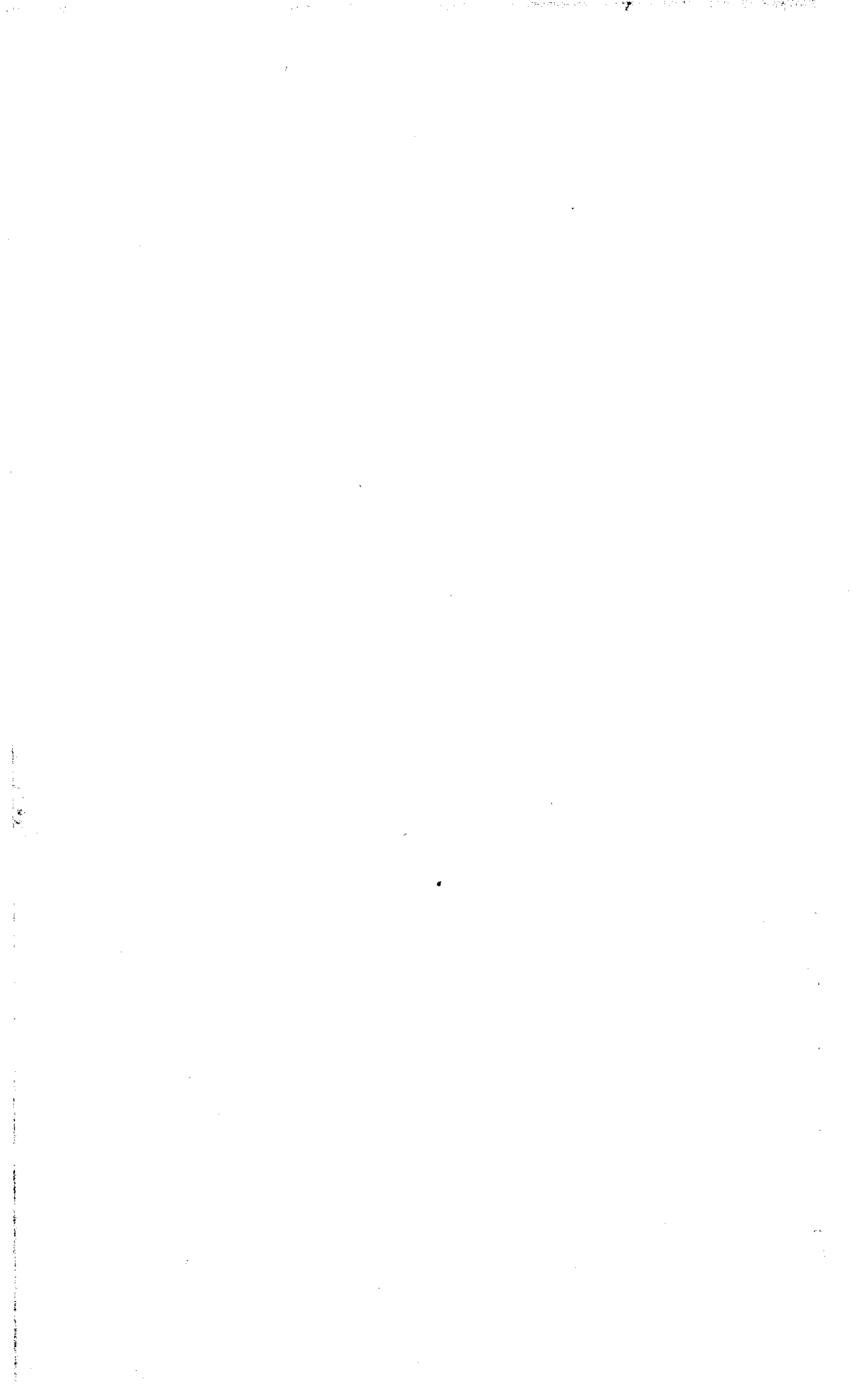

PROCEEDINGS AND DEBATES

OF THE

CONVENTION HELD AT HARRISBURG.

TUESDAY, October 17, 1837.

Mr. Hays, a delegate from Allegheny county, elected in the place of Mr. Bayne, appeared and took his seat.

Mr. Darlington submitted the following resolution, which was laid on the table.

Resolved, That this Convention will adjourn *sine die,* on the thirtieth of November next.

Mr. Cunningham submitted the following resolution, which was read a first and second time, and agreed to:

Resolved, That the resolution appointing afternoon sessions be rescinded, and that when the Convention adjourns, it will adjourn to meet to-morrow morning, at ten o'clock, and that that be the standing hour of meeting till otherwise ordered.

Mr. Porter, of Northampton, submitted the following resolution, which (the rule prohibiting the second reading of resolutions of this character being dispensed with,) was read a second time, and agreed to:

Resolved, That the following additional rule be adopted: That, if the President of the Convention be absent, on leave, he may nominate a delegate to officiate as President *pro tempore,* during his absence: *Provided,* such absence shall not exceed one week.

The Convention then adjourned until ten o'clock to-morrow morning.

WEDNESDAY, October 18, 1837.

The President laid before the Convention, "an address and draft of a proposed Constitution, submitted to the people of the State of New York, by a Convention of friends of Constitutional reform, held at Utica, in September, 1837."

Mr. Coates submitted a resolution, as follows, which was read a first and second time, and agreed to:

Resolved, That the use of this Hall be granted to Amos Gilbert, this evening, and the two succeeding ones, for the purpose of delivering lectures on education.

Mr. Reigart submitted the following resolution, which was laid on the table for future consideration:

Resolved, That not more than one hour in each day, shall be devoted to the consideration of motions and resolutions.

The President asked and obtained leave of absence for a few days; and, subsequently, announced to the Convention that he nominated Mr. Porter, of Northampton, under the resolution adopted yesterday, to act as President *pro tempore*, during his absence.

SIXTH ARTICLE.

The Convention then resolved itself into a committee of the whole, Mr. Chambers in the chair, for the purpose of resuming the consideration of the sixth article.

The question pending, being on the motion of Mr. Konigmacher to amend the amendment offered by Mr. Read to the fifth section, by striking therefrom all after the word "section," and inserting in lieu thereof, the following, viz:

"The Governor shall appoint such number of justices of the peace and aldermen, in the respective townships, wards and borough, as are, or shall be directed by law. They shall be commissioned for the term of seven years; but may be removed on conviction of misbehaviour in office, or of any infamous crime, or on the address of both Houses of the Legislature."

Mr. Read modified his amendment by substituting the following, viz:

"Section 3. Justices of the peace and aldermen shall be elected in the several wards, boroughs and townships, at the time of the election of constables, by the qualified voters, for the term of five years: two justices shall be elected in each borough and township: but two successive grand juries of the proper county, with the approbation of the court, may increase or diminish the number to be elected in any district: one alderman shall be elected in each ward."

Mr. Read said that according to his recollection of what had taken place during the previous session, the question concerning the election of justices of the peace had been already too often discussed. He did not rise now to re-open that discussion. The question that the justices of the

peace shall be elected, and for a term of five years, he regarded as having been settled. The only doubtful point related to the number of these justices. He had come to the conclusion that it would not be best to submit this question to be settled by legislation, but to fix two justices, as the number to which each township should be restricted, and the mode suggested by his amendment of giving the power to two successive grand juries to alter the number, appeared to be the most likely one to avoid those differences which were calculated to produce so much trouble and embarrassment.

The question being on the amendment moved by Mr. KONIGMACHER,

Mr. PORTER, of Northampton, suggested the propriety of modifying the amendment, by fixing the term of service at seven, instead of five, years. If the amendment was so modified, he would be disposed to vote for it.

Mr. KONIGMACHER accordingly so modified his amendment.

Mr. SMYTH, of Centre, asked for the yeas and nays, on the amendment, and they were ordered, the number required by the rule having risen to second the call.

The question being then taken on the amendment as modified, it was decided in the negative, as follows:

YEAS—Messrs. Bell, Carey, Chauncey, Coates, Cochran, Darlington, Gearhart, Heister, Hopkinson, Jenks, Kennedy, Konigmacher, M'Sherry, Meredith, Miller, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Reigart, Royer, Saeger, Scott Thomas, Sergeant, *President*—24.

NAYS—Messrs. Agnew, Barclay, Barnitz, Bedford, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chambers, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Cope, Crawford, Crum, Cunningham, Curll, Denny, Dickinson, Farrelly, Foulkrod, Fry, Gilmore, Harris, Hastings, Hays, Helffenstein, Henderson, of Allegheny, Denderson, of Dauphin, High, Houpt, Hyde, Keim, Kerr, Krebs, Lyons, Magee, Mann, M'Cahen, M'Dowell, Merrill, Merkel, Montgomery, Myers, Nevin, Overfield, Pollock, Purviance, Read, Riter, Ritter, Rogers, Russell, Scheetz, Sellers, Seltzer, Smyth, Snively, Stevens, Taggart, Weidman, Woodward, Young—64.

The question recurring on the amendment of Mr. READ, as modified,

Mr. DARLINGTON moved to amend the amendment, by striking out the word "two," and inserting in lieu thereof the word "one," before the word "justices," and to strike out the word "justices," and insert the word "justice."

The question being taken upon this amendment, it was decided in the negative.

Mr. PORTER, of Northampton, thought it would be better to permit the resolution to retain its original form, and to leave the details to be arranged by the Legislature. The report of the committee ran thus:—"Justices of the peace, or aldermen shall be elected in the several wards, boroughs, and townships, for a term of five years." This would leave the number of justices in each ward, borough and township, to be regulated by the future action of the Legislature. Should any evil be discovered, the Legislature could then apply a remedy. The opinion of the Convention had been decidedly expressed in favor of an election for five years. He would suggest, therefore, whether it might not be better to leave all the details to the Legislature, confining ourselves to the settlement only of great principles. The Legislature could regulate all these minor points,

the introduction of which into the Constitution, as fundamental provisions, would be productive of much difficulty.

Mr. READ said that when the report of the committee was made, he had been himself satisfied with it, but after the discussion of the subject had made him better acquainted with the opinions of the members of the Convention, he had thought it most expedient to fix the number of justices by a constitutional provision. It was not very important in which way it should be done. But if it were to be left to the Legislature to act on its own discretion, without the Constitution saying any thing on the subject, a great portion of the time of that body would be occupied in fixing the details. There would be remonstrances and petitions requiring examinination and action, and two or three sessions might pass away before the number could be fixed. The Legislature too was not so capable of fixing the proper number as the grand jury of the popular courts. After all he had heard on the subject, he had come to the conclusion that, if the matter, in the shape he now offered it, was not agreed on by the Convention, they would agree on no course at all. He could not therefore consent to modify his amendment.

Mr. MERRILL desired to offer an additional amendment. Some form of authentication was desirable, and the reasons which rendered this necessary, in relation to sheriffs, operated, with greater force as to justices.— He moved to amend the amendment, by inserting after the word "constables," the words "and shall be commissioned by the Governor."

The question being taken on the motion of Mr. MERRILL to amend, it was decided in the affirmative— ayes 46, noes 28.

Mr. KERR rose to suggest a further modification, although he was unprepared to offer it in the shape of an amendment. There was no provision made for decisions in cases of contested elections; and, in so many elections, it was not to be supposed that some such cases would not arise. He would suggest the propriety of inserting some such words as these, "in case of a contested election, the matter shall be settled in such manner as the the Legislature may provide."

Mr. READ said it seemed to him that it would not be advisable to go into details. As was at present the case in regard to county officers, it would be of course, a matter for the action of the Legislature, without being so specifically expressed in the Constitution ; all matters of detail concerning which no provision was to be found in the Constitution, must be settled by the Legislature, as a matter of course.

Mr. MANN moved to amend the amendment, by striking out all after the word "township," where it occurs the second time, leaving in the last clause which provides for the election of one alderman in each ward.

Mr. BROWN, of Philadelphia, expressed his intention to vote against the amendment of the gentleman from Montgomery, (Mr. Mann) and also against the amendment of the gentleman from Susquehanna, (Mr. Read) with a view to come back to the original proposition. He was opposed to leaving the matter in the hands of the grand jury. The sheriffs might as well select, as they do in reference to the juries themselves. Choice of justices might be made for the purpose of accomplishing personal objects, and therefore this would not be a safe depository of the power. He would much rather leave it to the people to determine how many justices there

should be, and if they would not determine, he would leave it to the Legislature. Perhaps it would be desirable to make the justices salary officers, and then they might be diminished, should the number be too great.

Mr. SMYTH, of Centre, stated that it was the practice of the courts in his county, to draw for the juries; therefore there could be no apprehension of any fraud on that ground. In this particular, therefore, he begged leave to correct the gentleman from the county, (Mr. Brown.) The nearer these justices were to the people the better; and the grand jury was more directly a part of the people than the Legislature. The business of the justices was in the county, and the nearer their connection with the people the better. He hoped, therefore, that the amendment proposed by the gentleman from Montgomery would not be adopted.

Mr. BROWN said he stood corrected by the statement of the gentleman from Centre. He did not profess to be conversant with the subject. But he still considered the mode to be quite as objectionable as if the number were to be fixed by the sheriffs, because the sheriffs draw the grand juries. The grand juries were not elected by the people, but the Legislature were, and in this view were next to the people. He was willing to vote for the people themselves to determine the number. He had mentioned the Legislature, because it had been already decided, that it should not be left to the people to settle the number of justices. If that question were still open, he would vote that the people should themselves make the decision. The number of these magistrates could be provided for in the schedule; and as to all the intermediate matters, provisions could be embraced in the schedule.

Mr. SMYTH wished to correct another error into which the gentleman from the county of Philadelphia had fallen. He did not himself know what was the practice in that county, but if the gentleman had looked into the law appointing commissioners, he would have seen his error. It is provided by this law, that the commissioners shall fill the ballot box with ballots once a year, and when it becomes necessary to draw from the box, which is always kept locked from the last court, the first twenty-four names drawn out, were the grand jury, and the next drawn out constitute the traverse jury. This was the practice in the county of Centre. He did not know how it was in the county of Philadelphia.

Mr. MANN admitted that the statement of the gentleman from Centre was correct so far. The assessors make a selection of names, which they throw into the ballot box; the names are then drawn out in the manner described by the gentleman from Centre. He (Mr. M.) wished that the people should determine the number. He was opposed to a large number of these justices, and would much rather that it should be made definite.

Mr. CURLL said the usual mode in his county was this. The Commissioners and sheriff every year select from the duplicate, sober, respectable citizens. These names are put into the ballot box, and drawn out in the manner described. The assessors only make the returns of the duplicates.

Mr. STEVENS said it must be apparent to every one that the more they went into details in their amendments the more perplexed they would be. It would be much better, as had been suggested by some gentleman, to

content ourselves with laying down certain general principles, and leave the details to be supplied by the Legislature. The principle of the election of the justices by the people had been settled, and as to the number of justices, and all the other incident and subordinate matters, they ought to be left to the Legislature. The whole of these details had better be so left. The circumstances of the country may change from year to year, and we cannot change the constitutional law from year to year to adapt it to these circumstances. It would therefore be wise to entrust it to the Legislature, not to alter the principle which had been settled, but to arrange all matters of detail. If we make these arrangements in the fundamental laws, and they should work ill, no change can be made without calling a new Convention. There should be a uniform law laid down, which would enable the Legislature to make changes not affecting fundamental principles, as measures worked well or ill. If it were provided in the Constitution that there should be two or three justices for every borough, the operation would be most unequal. Some boroughs contain a population of six thousand, while others have not more than five hundred inhabitants. There could be no general rule, fixing a definite number, which would not operate unequally. Let us determine that the people shall elect the justices of the peace, and that the Legislature shall, by some general law, determine the number and appointment of them.—Then, if the law should be found to operate unequally, it could be changed the next year. If we insert in the Constitution a provision of this kind, it would bear very unequally on the State; one township might elect a hundred justices, while another might elect only five. It then would be no uniform system; every thing would be under the influence of party and political feelings, operating differently in one part of the Commonwealth from what it would in another; but if a general law were passed by the Legislature, it could be changed to suit the circumstances and wishes of the people. The best way in his opinion, would be to regulate all the propositions of amendment. He hoped, therefore, as a great deal of time had been spent before to day on this subject, and as it had received as large a share of discussion as its importance merited, that we should negative all the amendments, and adopt the report.

The motion of Mr. MANN was rejected.

The question being on the motion of Mr. READ,

Mr. PORTER, of Northampton, moved to amend the amendment, by striking out all after the words "five years." The number and apportionment of the justices, might then be fixed in the schedule, as had been very properly suggested by the gentleman from Adams, (Mr. Stevens.)

The motion was agreed to.

Mr. BROWN, of the county, moved further to amend, by inserting after the word "township," the words, "by the qualified voters thereof;" which motion was agreed to.

Mr. AGNEW moved to strike out the words following, viz: "At the time of the election of constables." By the present Constitution, no time was fixed for the election of constables, and it was left to be fixed by law. He could not see any necessity for fixing the election of justices, at the time of the election of constables, when that time was uncertain. He did not approve of this Siamese twinship, and thought it better not to fix the place.

Mr. Read said, the argument would be very good, if applied to the day or month of the election, but could not operate against using a general expression. It was true that the time of electing the constables in the townships was fixed by law, and was different in different places; but if the time thus fixed, was a convenient time for the citizens, there could be no better time for the election of justices.

The motion to amend was then disagreed to.

Mr. Gilmore moved to amend, by striking out "five," before the word "years," and inserting "four." He was anxious to record his name on the question, and he hoped the committee would favor him with the yeas and nays—but they were not ordered, and the amendment was rejected.

Mr. Scott said, the amendment before the committee affirmed the principle of election, by giving the election of justices to the people, and if it was the wish of the people, he should not object to it. But, it also affirmed another principle to which he strongly objected. It abrogated all the existing commissions; and that numerous and respectable body of men, the justices, were ousted of their offices, and in a way that implied no inconsiderable degree of censure. He was unwilling to lend his aid to stigmatize any body of men, and more especially one which was generally so well informed and respectable. If it was not the desire of the people to render the officers now in commission, ineligible under the present Constitution, it was practicable to have a gradual change; and he wished to put on record a plan to carry out the principle which he proposed, as an amendment to the amendment, of the gentleman from Susquehanna.

He then moved to amend the amendment, by striking therefrom all after the words section 3, and inserting in lieu thereof, as follows, viz:

"The number of justices of the peace and aldermen for every township, city, borough, ward and district, of the Commonwealth, shall be regulated by the Legislature, whenever by death, resignation, removal or otherwise, the number of justices or aldermen now existing, in any township, city, borough, ward or district of this Commonwealth, shall be reduced below the number to be prescribed by law, an election shall be held to supply the deficiency, at the next constables' election; and the term of office of each justice or alderman so elected, shall be five years from the date of his commission, which shall be issued by the Governor upon return made to him by the proper judges of the election. The Legislature shall provide the mode of trying contested elections."

Mr. Scott did not, he said, wish to argue the matter any further, and he, therefore, called for the yeas and nays, which were ordered.

The question was then taken and decided in the negative as follows, viz:

Yeas—Messrs. Biddle, Chauncey, Cope, Darlington, Hopkinson, Long, M'Sherry, Meredith, Merrill, Pennypacker, Porter, of Lancaster, Reigart, Scott, Thomas—14.

Nays—Messrs. Agnew, Banks, Barclay, Barnitz, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Cochran, Crawford, Crum, Cunningham, Curll, Denny, Dickerson, Farrelly, Foulkrod, Fry, Gearhart, Gilmore, Harris, Hastings, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of

Dauphin, Hiester, High, Houpt, Hyde, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Lyons, Magee, Mann, M'Cahen, M'Dowell, Merkel, Montgomery, Myers, Nevin, Overfield, Pollock, Porter, of Northampton, Purviance, Read, Riter, Ritter, Rogers, Royer, Russell, Saeger, Scheetz, Sellers, Seltzer, Smyth, Snively, Stevens, Taggart, Weidman, Woodward, Young, Sergeant, *President*—77.

The question recurring on Mr. READ's amendment, it was taken, and the amendment was agreed to.

The committee proceeded to the consideration of the sixth section of the report, as follows:

"SECT. 6. All officers whose election or appointment is not provided for in this Constitution, shall be elected or appointed as shall be directed by law. But no officer connected with, or appertaining to the system of internal improvements, shall be appointed by the Governor."

Mr. STEVENS moved to amend the amendment, by striking out therefrom all the words after the word "law," in the third line, being the words following, viz: "But no officer connected with, or appertaining to the system of internal improvements, shall be appointed by the Governor."

Mr. READ said, if there was any thing worth retaining at all in the section, it was this. The people too, were more unanimous upon the question of reducing the Governor's patronage, than upon any other; and the patronage growing out of the internal improvement system, great as it now was, would, hereafter, become greater than all the rest united. If we do not strip the Chief Magistrate of all this, or of the greater portion of it, we shall fail to strip him of what will, in a few years, constitute an amount of patronage much greater than he has ever yet possessed. This very clause, which it was now proposed to strike out, would be the most effectual provision we could make for the reduction of the patronage of the Executive; and it was the gist of the whole section. He trusted that the motion to strike out would not be agreed to.

Mr. STEVENS said, the previous part of the section which he had not proposed to touch, made a material change in our Constitution. All officers under the present Constitution were appointed by the Governor. That was now changed, and he was to have the power of making no appointments which the Constitution did not expressly give him, and all officers whose appointments are not provided for, in the Constitution, are to be appointed in such manner as the Legislature may direct. This amendment left the Legislature untrammeled. By leaving out the clause, therefore, we submit it to the people to say, by their representatives, from year to year, how their officers, connected with the internal improvement system, shall be appointed. Some gentlemen here, he was aware, had the faculty of knowing how many of the people were for this and that. He professed no such knowledge, but one thing was certain—if the people desired and continued to desire that these appointments should not be made by the Governor, their representatives, coming fresh from them, every year, and knowing their sentiments, would carry them into effect. But, if we bind the people by a constitutional provision, they must either lose all power over the subject for the next fifty years, or until another Convention be called. But his amendment left it to the people to say, every year, how the officers of the public works should be appointed, from year to year, and from generation to generation. He would ask

whether this was not a more liberal and republican mode of reform, than to bind down the people to a fixed mode of appointment. It was not necessary for him argue the question, whether the people desired the appointments to be made by the Executive or the Legislature; for the amendment proposed to leave it to the people to say to which it should belong. If he was to decide upon the question, and was obliged to make the power of appointment permanent in either branch of the government, he would prefer the executive. But, it was unnecessary, to make any choice between them. Patronage, it was true, was corrupting, but not more so, when in the hands of one man than in those of a body of men. There ought to be, between the Governor and those officers who were to conduct the public works, unity of opinion, and harmony of feeling and action. If the appointments be made by the Legislature, and the people think the public works badly managed, then let them make a change. He presumed that gentlemen had made up their minds on this subject, and it was, therefore, unnecessary to discuss it.

Mr. Merrill would ask the chairman of the committee who reported this section, if it did not leave with the Legislature the appointment of all these officers. That would be the effect of the section; and, in his opinion, the Legislature was the very worst place where their appointment could be placed. It would be very vexatious to have hundreds of officers continually soliciting and hanging around the Legislature for these appointments. Much time, too, would be consumed in making their appointment. Now, the elections made in joint ballot consumed a week; and the extension of the system now proposed, would increase the length of the sessions beyond all endurance either of the members or of the people. He submitted, too, whether it would not be a very dangerous system to blend the Executive and Legislative powers in this manner. Would we obtain any better officers by this mode of appointment than we have now? The question was, not whether we should give the appointments to the Executive, but whether they should be left open for the people to place them where they might judge it to be best, from year to year. If they find corruption and logrolling to be necessarily attendant upon appointments by the Legislature, they can, if they please, alter the mode of appointment; but, if we pass this amendment, it will not be in their power.

Mr. Read would, he said, very briefly reply to the objectious urged by the gentleman from Union. In the first place, the report of the committee would not have the effect that he supposed. Its effect would not be to vest all these appointments in the Legislature, but to leave it to the Legislature to say in what manner they should be made. They might give the principal appointments to the people, and the subordinate ones to the heads of the department. They might create the office of Secretary of public works, or establish a board of internal improvement, to be chosen either by the Legislature or by the people, and all the subordinate appointments could be filled by these officers. The argument as to the consumption of the time of the Legislature, had, therefore, no force nor validity.

Mr. Meredith thought it very important, he said, that the amendment of the gentleman from Adams should be agreed to. Some minor matters in connexion with it had occurred to him as worthy of consideration, to which he would refer. The idea of the gentleman from Susquehanna,

was, that the Legislature should provide for the appointment of a single officer who should have all this dangerous patronage in his hands. This would bring us back to the very system of a single head, which was so much objected to. The very objection to the present system, was, that it vested too much power in a single individual.

Mr. Read explained that he had proposed to give it either to an individual officer or to a board of public works.

Mr. Meredith said, the gentleman's favorite idea seemed to be a single head. The Governor had now all the responsibility of these appointments, and he was elected by the people ; now, if the head of the public works be elected by the people, and at the same time, the patronage of the subordinate officers will be substantially in the same hands, and in the hands of the same party ; but the Governor will have a scape goat upon which to throw all his mismanagement. We did not wish the dominant party to have such a scape goat upon which they could shift all the responsibility ; he preferred that it should rest upon the Governor alone. Under the system proposed by the gentleman from Susquehanna, we should have one of two things ; a man using patronage against the will of the people, or a man elected by the people as an adjunct of the Governor, and to bear the burden of all the Governor's mismanagement, when it was great enough to turn the Governor out of office.

If the Secretary of the board of public works should die, what provision would be made in that case? Were the works to be suspended, was the travel to stop, until the Legislature had been convened to provide for the election of his successor? This inconvenience would be great and very severely felt. He hoped there would be no indisposition to trust the people themselves, and their representatives with the power of determining how these appointments should be made, and he trusted that the motion to strike out would be agreed to.

Mr. Clarke, of Indiana, did not, he said, pretend to say that the Legislature should elect a Secretary of public works. There was not such an officer in every State. There was in Virginia a board of public works consisting of thirteen members. In other States there were Canal Commissioners, three or more in number. But these officers were never appointed by the Governor. In New-York, which commenced the system of Internal Improvement, and set the example to all the other States in this respect, the officers connected with the public works were chosen by the Legislature, and the system had been found to work well. The Canal Commissioners held their offices longer in New York, than they do here. When the Legislature make the appointments, the officers carry the confidence of the people with them and are restrained by them. But when the appointments are made by the Governor, the people are jealous of them and are not so well contented with them. What called this Convention together, if it was not, in fact, the general wish to reduce the Governor's patronage? It was originally, but by the Internal Improvement system, it had been made much greater. What was the cause of the bitterness and personal animosity which characterized our political struggles? The patronage of the Governor. In social life we were not so friendly with each other as we ought to be, because every third year, we were brought into collision by a contest for these offices. If we failed to take these appointments from the Governor, we should fail to do what the people wished and expected. Why

should we not say at once that the Governor shall not appoint these officers? If it was left for the Legislature to say how they should be appointed, there would be found there, as there always was when the Governor belonged to the party predominent in the Legislature, a strong disposition to throw the whole upon him. He hoped we should say that the Governor shall not exercise any part of this power. In New York, the public works are superintended by two boards, both of which are chosen by the Legislature. He would be glad to see the same plan adopted here, We ought, in his opinion, to do every thing we can to separate the subject of Internal Improvements from the party strife of the day, and submit them wholly to the good sense and impartial judgment of the country for support; and he considered that taking the appointment of these officers from the Governor would go a great way in producing that desirable result. He hoped, therefore, that the amendment might not prevail but that the section should remain as it was.

Mr. DENNY concurred in some of the principles laid down by the gentleman from Indiana, (Mr. Clarke,) and he hoped that upon other occasions the gentleman would carry them out. The principle he alluded to, was that of separating as far as possible these appointments from political parties. It was a good principle, and he hoped to see it carried out in some of the questions which may come up before us for our decision; but he was at a loss to see the propriety of retaining this clause. Why not leave it with the Legislature to dispose of as they may think proper? Either allowing them to vest the appointment in the Governor, or making such other disposition of it as may seem to them just and proper. It was true that we met here for the purpose of reducing the patronage of the Governor, but if he understood the wishes of the people in relation to this matter it was to apply chiefly to county officers, those officers being nearly connected with the people, and it being consequently proper that they should have the appointments of them in their own hands. They were officers who came immediately under the eye of the people in the different counties, being situated at the seat of justice of every county; but this was not the case with the officers connected with the public works, who were spread all over the State. No person could have any eye upon them unless it was the Governor, or the Executive Department. Then he thought that they should be kept in such situation, that they might know that the eye of the Governor was always upon them. He apprehended that if these officers were appointed by the Legislature or the people, they would be almost entirely irresponsible; whereas if they were appointed by the Governor, they would be held accountable to him, and would perform their duties more faithfully and promptly. The gentleman from Indiana, Mr. Clarke, has told us that the New York system has worked very well, and the very best recommendation which struck the gentleman was that they had not made changes so often as we have done in Pennsylvania. He was therefore to understand the gentleman, as saying that the permanence of the situation made their system the better one. Now this was not the doctrine which he, (Mr. Denny,) subscribed to. It perhaps may show the power of the party, that made these appointments, or it may be the good conduct of the officers which kept them so long in office. In Pennsylvania, however, we have had changes, and in his opinion with good effect; because the fact that they knew that these changes were to be expected, impressed upon their minds the responsibility under

which they acted and the amenability under which they were to the Governor or Legislature, which operated upon them in a most salutary manner. This kept them attentive to their duty and prevented improper conduct. He preferred having the matter left to be regulated by the Legislature, and should therefore vote in favor of striking out the latter clause of the section.

Mr. BIDDLE was opposed to frequent changes in our fundamental article of Government. There was nothing more likely to produce discontent in the minds of the community than the inserting of unnecessary restrictions in the Constitution, upon the people or the Legislature. The part of this section proposed to be stricken out, does propose restrictions not only upon the will of the people, but upon the will of the representatives of the people, the members of the Legislature of the State. He was therefore opposed to it, and opposed to it because there will be a constant struggle to get rid of these restrictions. For these, and the additional reasons which have been suggested by other gentlemen, he was opposed to retaining in the section this last provision.

Mr. BANKS, did not apprehend that the difficulty suggested by some gentlemen, in relation to this section would arise. If the present section was stricken out, nothing would be lost by it, because if it was ascertained at the close of our labors that some restriction should be made, a provision can be introduced to that effect. If the proposition of the gentleman from Adams, (Mr. Stevens,) was agreed to, these offices might be filled by the people or by the Legislature, and the Governor would only have the appointment of them in cases where the Legislature might fail or neglect to discharge their duty. By referring to report number twenty-nine, which has not yet been reached, it will be seen that the minority of that committee, reported a provision as follow, viz: "The public improvements of this Commonwealth shall be under the managemant of a comptroller of public works, who shall be annually appointed by the Governor, and who shall receive a compensation of not less than ——— dollars." Now when we come to act upon that section, he had no doubt but the chairman of the committee on the sixth article can show that the Governor should not have this appointment in his hands, and the Convention can then determine whether they will take this power from the Executive; but agreeing to strike out the provision proposed to be stricken out, by the gentleman from Adams, did not necessarily throw the appointment into the hands of the Governor. It only has the effect to place in the hands of the Governor the appointment of such persons as the Legislature has omitted to provide for. As there would be nothing lost by the adoption of this proposition, he should therefore vote for it.

Mr. STEVEN's motion to strike out was then agreed to, yeas 50, nays 23; and the sixth section of the report as amended was adopted.

So much of the report of the committee as was in the following words, was then adopted:

"SECT. 7. A State Treasurer shall be elected annually by the joint vote of both branches of the Legisluture."

The eighth section of the report of the committee was then read as follows:

"SECT. 8. All State officers created by law, except judicial officers,

shall be filled by elections of the joint vote of both branches of the Legislature."

Mr. MEREDITH considered this section as conflicting with sections of the Constitution already passed through committee of the whole. This section provides that all State officers except judicial officers, shall be filled by election by the joint vote of both branches of the Legislature; another section which we have adopted provides that a Secretary of State shall be appointed by the Governor. He observed also, in this section what had escaped his notice in the preceding section. He meant that the State Treasurer should be elected by *joint vote of both branches* of the Legislature. The old Constitution provided that the State Treasurer should be elected annually by the joint vote *of the members* of both branches of the Legislature. If the effect of this was to be, that each House was to vote separately, he should like the chairman of the committee on the sixth section, to inform him of that fact, and if this turned out to be the construction placed upon it, he scarcely thought the Convention were prepared to vote for it. Inasmuch as provision had been made in another section for the appointment of certain officers, he thought it scarcely worth while to adopt this section. The whole of the argument which we have had, went to show that it should be left discretionary with the Legislature, as to the place of vesting the appointment of the Secretary of the Land Office, Surveyor General and Auditor General. They are all created by law, and he trusted their appointment would be left discretionary with the Legislature. He therefore hoped that the committee would negative the section under consideration.

Mr. BROWN, of Philadelphia county, apprehended that the gentleman from the city, had fallen into an error, in supposing that it was intended that this power should be left discretionary. It might have been that the argument had a bearing that way, but certainly the vote had not. He had voted that the Governor should not have this power of appointment, with the full hope that the mode of appointment might be fixed and designated in the Constitution, and if no other gentleman took upon himself to make the motion, he would do it when the proper time arrived. At present he would move to strike out the words " except judicial officers."

Mr. READ said, the effect of this amendment would be this: If the Legislature at any time erected and created a new court, as they might do, the amendment, if adopted, would require the judges to be elected by the joint vote of the Legislature. Now he presumed this was not the intention of the gentleman himself, as he took it, but this would not be a proper mode of appointing judges of courts.

Mr. BROWN said that this was his intention, and he intended to move to do so at a proper time. The section seemed obscure to him, as he was not able to say what was meant by the term State officers. His amendment was to place judicial officers on the same footing.

Mr. READ explained what was meant by State officers, such as Attorney General, Auditor General, Secretary of the Land Office, Secretary of the Board of public works, and Canal Commissioners.

Mr. BROWN was still at a loss to know why judicial officers were excluded. He could see no necessity for putting in the words "judicial officers" at all.

Mr. BELL could not understand what was meant by the words State officers. It might receive different constructions by different persons, and in his opinion it was in direct contravention of a provision already adopted. If his memory served, the Convention had agreed to allow the Governor the appointment of a Secretary of the Commonwealth. Then was he not to be considered a State officer. If therefore the committee agree to this part of the report we will have contradictory provisions in the Constitution. In relation to the amendment proposed by the gentleman from the county of Philadelphia, (Mr. Brown,) if it was adopted, it would be forestalling the opinion of the Convention in relation to the judiciary, before it came up for discussion. It seemed to be the general opinion in the Convention, that the appointment of judges of courts, was to be vested in the Governor; but the object of the gentleman from the county appeared, at this premature stage, to be to procure an expression of opinion upon a part of the report, that the Governor was not to have this power of appointment, but that it was to be vested in the Legislature. The object seemed to be to ask us to vote and commit ourselves on this great question, before it was fully and fairly discussed. He would ask gentlemen, when it was expected that we would have a lengthy and able argument on the subject of the judiciary, whether they were now prepared to give their votes and settle this great leading question? He was not prepared to do it, and he would therefore vote first against the amendment proposed by the gentleman from Philadelphia county, and then against the whole section?

Mr. BROWN's amendment was then disagreed to; and the report of the committee as contained in the eighth section was rejected.

So much of the report of the committee as was contained in the ninth section, as follows, was taken up:

"SECT. 9. Clerks of the County Courts, Surveyors, Recorders of Deeds, Registers of Wills, and Sheriffs, shall keep their offices in the county town of the county in which they respectively shall be officers."

Mr. DARLINGTON moved to strike out the words "County Surveyors."

Mr. RUSSELL hoped that this amendment might not be agreed to. In the county he represented they had suffered very great inconvenience on account of the office of County Surveyor not being in the county town. In the trial of cases of ejectment it frequently becomes necessary and is very important that reference should be had to papers in the office of the Deputy Surveyor, and in many instances it becomes necessary to go some fifteen or twenty miles for the purpose of obtaining these papers. Courts, and all persons connected with the transaction of business relating to land suits, find the inconvenience of these offices being kept in any other place than the county seat. So inconvenient has it become in many counties that the Legislature has provided that it shall be kept in the county seats of those counties, and unless the gentleman could show some good reason why this provision should be stricken out of the section, he hoped it would not now be dispensed with. He thought it important that this, as well as all other offices connected with the county business, should be kept in the county town.

Mr. DARLINGTON could see no reason why this office should be kept in the county town. In the eastern counties it was of small importance, and

the officer had very little to do. In Chester county it was far more important that the County Surveyor should reside in a remote extremity of the county, than in the county town, as his duty lay almost entirely in distant sections of the county. It was far more important that he should be in the neighborhood of the people, than in the neighborhood of the courts. In many of the counties, this officer was seldom required to be in attendance at courts; certainly, in his experience, he had never known any occasion for the County Surveyor residing in the county town. If, however, it was necessary in any of the counties, that the County Surveyor should reside in the county town, it could easily be provided for by law. This was the proper course of providing for these cases. There were but very few counties in which it would be necessary to have this provision made, and why insert in the Constitution a clause making it imperative in all counties, no matter how inconvenient it may be to the people of those counties. For these reasons he had moved to strike out this provision and he hoped the motion might prevail.

Mr. Merrill said if it went no farther than to inconvenience the parties in suits, he would not care so much about it, but he knew, and every lawyer knew, that great injustice was frequently done to persons litigating, from the want of access to the County Surveyors' offices; and in many of these cases it was impossible to obtain any aid from the court. Where the County Surveyor's office is kept at a distance from the seat of justice, one party may produce papers which will have a very important bearing in their favor, but which could easily be set aside by other papers in the office. If, however, access cannot be had to these papers, injustice is done. He himself had known of persons having to travel a whole night for the purpose of obtaining testimony from these offices to sustain their cause in court. If, then, these papers are important in court, and it had been said by the Supreme Court of the State, that almost the sweepings of a Deputy Surveyor's office was evidence in court, the office of the Surveyor ought to be where it could be easy of access. It may be observed that it would be inconvenient for the Deputy Surveyor to reside in the county town. It was not necessary, however, that he should reside there, but merely that he should have a room or an office there, where the papers should be kept, so that they might readily be obtained when they were wanted in court. It very frequently happens that these papers are the turning point in occasioning justice or injustice to be done. A person may come to court to carry on his trial, and he may be surprised at the production of papers from the Deputy Surveyor's office, which he had no idea of, and which he may not be able to rebut because of the distance of the office from the seat of justice. It appeared to him to be of the utmost importance that this office should be in the county town, and if it was inconvenient to the County Surveyor to keep it there, all he had to say to it was, that his convenience ought to yield to that of the public convenience. It might be, that it would be unnecessary in some of the small counties, but as a general rule it was important to the public, and more important to the parties litigating and to the court before which the trials were to be had.

Mr. Woodward said that the question was not whether the office of Deputy Surveyor should be kept in the county town, but it was whether we should introduce a provision in the Constitution on this subject. It

is perfectly practicable for the Legislature to provide, in every county where it is proper that the office of Deputy Surveyor should be kept in the county seat, that it should be kept there, but he could not see the necessity of having a constitutional provision that these offices should be kept in every county town. He could see no necessity for it; it might operate to make it inconvenient to many of the people of the counties, and he was opposed to having any constitutional provision on the subject. He should therefore vote against the amendment, and leave the article of the Constitution to stand precisely as it is. The committee had made another alteration, the reason for which he could not precisely understand, and unless some good reason could be given for the change, he hoped it would not prevail. In the third section of this article in the old Constitution, the Governor has the power of dispensing with the keeping of county offices in the county towns in certain cases. This was dispensed with in the proposed amendment. Now he thought the better way would be to restore the latter part of the third section of the old Constitution. and leave the other matter to the future action of the Legislature, and let them provide for the keeping of the office of County Surveyor in the county towns of those counties in which it is necessary; and where no necessity for it exists, let these officers keep their offices where they please.

Mr. Read would suggest another reason which he had not heard urged, in favor of keeping these offices at the county town. These papers it is well known are of very great importance in case of land claims; and if they are kept in the county towns, they will in almost every case be kept in fire proof buildings, and be safe; whereas, if they were not kept at the county seat, they would be subject to destruction by being exposed. In regard to the clause in the third section alluded to by the gentleman from Luzerne, (Mr. Woodward,) he would say that it was entirely unnecessary, as it had always been inoperative, no case ever having occurred to require the Governor to exercise it. It was a matter therefore of not the least importance, and he would just as soon have it inserted as omitted, as he had no doubt it would remain a dead letter in the instrument.

Mr. Sergeant said that the argument, so far as he had heard it, in favor of having the Deputy Surveyor's office in the county seat, was confined to a single point; that is, that gentlemen have experienced inconvenience in cases where evidence happened to be wanted in trials of causes in courts. It has been said that sometimes it happens that papers are produced in court as evidence, which might be counteracted by other papers which could be produced from the clerk's office, if they could be obtained; and it was said by one gentleman that parties in these trials were sometimes surprised when this evidence was produced. In the first place he thought this thing was magnified, because in all trials of these kinds every thing is examined which can throw light on the subject, before the trial comes on. If there is any thing in a Surveyor's office which had any bearing upon the case, a counsel would be negligent of his duty if he had not looked into it. He was not therefore likely to be surprised. Well, supposing that you do require the Surveyor to keep his office in the county town for the convenience of the courts and the parties who have trials before them, do you not subject the community to inconvenience? Then for the sake of a temporary and occasional con-

venience, you may subject the whole community to a constant inconvenience. He thought it therefore better to leave the whole of these arrangements to be made by the Legislature. As to the matter of fire proofs, he might to be sure have them, but none were provided for him, and if they were yet to be provided for, they could as well be provided at other places as at the county towns. He did not look upon these papers as so important as the public records. The Deputy Surveyor makes a return to the Surveyor General's office, and these returns are regularly recorded, and can be obtained at any time. It is sometimes however desirable to see the field notes and other papers, which come in as a mere matter of evidence; but they are not to be classed amongst the records. It appeared to him however, that it was going entirely too much into details to be noting all these matters in the fundamental law. Inasmuch as it was an office which was required to be exercised all over the counties, and in some counties only to be exercised in particular districts in the county, he thought it ought to be left to the Legislature to use such discretion in relation to it as they might think proper. He hoped, therefore, that the amendment might not be adopted.

Mr. CLARKE, of Indiana, suggested that if the words "County Surveyors," were stricken out, it would be better to insert after the word "Sheriffs," the words—"and such other officers as may be required by law."

Mr. RUSSELL said that this question was looked upon as though it was requiring the Surveyor himself to reside in the county town. This was not the case. The amendment did not require that the County Surveyor should reside in the county town, but merely that he should keep an office there. He could not see what objection could be made to this. It might be that a few counties would not be benefited by it, but in a large number it would be a very great convenience, and he thought therefore it ought to be granted, as it would not be any inconvenience to the other counties.

Mr. BONHAM said this provision would be altogether useless in the county he in part had the honor to represent. The practice in his county was for the Deputy Surveyor to advertise a day when he would meet those persons having business with him. His business was so very limited that it would be utterly useless to require him to keep a room in the county town, or to reside there. His business would not justify the expense, and why compel him to keep an office there? He therefore thought that the amendment reported by the committee ought to be dispensed with, and let the Constitution stand as it is in this particular.

Mr. PORTER, of Northampton, would suggest another reason why these words should be stricken out. It was that the Deputy Surveyor was not known to the Constitution at all, and was not named in any other part of the instrument, except this. He apprehended that it would be wrong to make provision in the Constitution where an office should be kept, when no such office was created by the Constitution. For this reason he should vote for striking out the words.

Mr. BELL, of Chester, said that we could all understand the reason why the committee inserted the provision requiring the Prothonotaries and Sheriffs to keep their offices in the county towns, whether the population was large or small. The reason was on account of these offices being necessarily connected with the courts of law in every town in the Commonwealth. He knew it had been avowed here, and such was the fact,

that the Surveyor General had little or nothing to do with the administration of justice. In the county which he (Mr. B.) had the honor to represent, he had no recollection of a single instance in which that officer was called upon to appear in a particular cause. He was aware that titles were not so good in the Western counties as elsewhere, and hence the necessity of having recourse to these officers for proof. But why, he would ask, should the Constitution introduce a provision which should be made general throughout the State, requiring these officers to reside at the seat of justice when in all the Eastern counties, they were not required? Why not leave the matter to the Legislature, to act according as public convenience may require? There could be no difficulty. Why should we call upon the county of Bedford, of Allegheny, of Chester, of Bucks, or any other county, to do that which they might not deem necessary? Constitutional provisions ought to be general in their character, and such as are called for by the necessities of the people; while all details should be left to legislation. He wished that the amendment would be struck out.

Mr. MERRILL, of Union, saw no necessity for a constitutional provision on the subject. He did not think that any inconvenience would be felt if the office of County Surveyor were not kept in a county town. He would vote against the amendment, and also against the report of the committee.

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

Mr. CLARKE, of Indiana, moved to amend by strking out the word "and," before the word "Sheriffs," and inserting after the word "Sheriffs," the words following, viz: "and such other officers as may be required by law."

Mr. C. said he was not at all anxious as to whether it should be adopted or not. This amendment, however, had occurred to his mind, as calculated to meet the difficulty. If it should be lost, then the Legislature would have to exercise their power as they might think proper.

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

Mr. DARLINGTON moved to insert the word "Prothonotaries," before the word "Clerks," in the beginning of the section, striking out the word "county," where it occurs before the word "Courts," in the first line, and inserting in lieu thereof the word "several."

Mr. STEVENS, of Adams, would suggest whether this was not bringing us back to the old Constitution, with the single exception that the Governor may dispense with the county town. He could see nothing to be gained by this amendment. The old article, it seemed to him, provided every thing that could be desired. It would be better to negative the amendment, and leave the Constitution as it is.

The question being taken on the amendment, it was negatived.

The question was then taken on agreeing to the report of the committee, as amended, and it was decided in the negative.

Mr. BELL, of Chester, moved that the committee rise.

And a division being called for, there appeared—ayes 44, noes 31.

So the committee rose and reported progress.

The PRESIDENT then announced that he should nominate Mr. PORTER, of Northampton, to act as President *pro tem.* during his absence from the Convention for a few days.

On motion, the Convention adjourned.

THURSDAY, OCTOBER 19.

The PRESIDENT laid before the Convention the returns and credentials of EBENEZER W. STURDEVANT, a delegate from the county of Luzerne, in the room of W. SWETLAND, resigned.

Mr. MANN submitted the following resolution, viz:

Resolved, That from and after this day, the Convention will commence its sessions at nine o'clock in the morning of each day, (Sundays excepted,) and also hold afternoon sessions, commencing at half past three o'clock, until otherwise ordered, subject to the above exceptions.

Mr. MANN moved the second reading and consideration of this resolution, but the motion was rejected—ayes 41—nays 42.

Mr. THOMAS, submitted the following resolution, viz:

Resolved, That when this Convention shall adjourn, it shall adjourn to meet again at nine o'clock to-morrow morning, and that such shall be the standing hour for meeting until otherwise ordered.

Mr. THOMAS called the second reading and consideration of this resolution, which was agreed to, and the question being on its adoption;

Mr. FULLER demanded the yeas and nays which are ordered.

Mr. READ moved to amend the resolution by adding to the end thereof, the words, " will each day take a recess from one until three o'clock.

Mr. MANN demanded the yeas and nays on this motion, and they were ordered.

The question was then taken on the motion of Mr. READ, and decided in the affirmative, as follows;

YEAS—Messrs. Agnew, Bedford, Biddle, Bonham, Brown, of Lancaster, Chambers, Clarke, of Beaver, Clark, of Dauphin, Coates, Crawford, Crum, Curll, Darlington, Dickerson, Dillinger, Donagan, Fuller, Gearhart, Gilmore, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hyde, Keim, Kennedy, Kerr, Krebs Magee, Mann, Martin, M'Cahen, M'Call, M'Sherry, Merkel, Montgomery, Myers, Pennypacker, Pollock, Purviance, Read, Ritter, Royer, Seager, Scheetz, Scott, Sellers, Seltzer, Smith, Smyth, Snively, Stickel, Tagart, Thomas—58.

NAYS—Messrs. Banks, Barclay, Barnitz, Bell, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Carey, Chandler, of Philadelphia, Chauncey, Clarke, of Indiana, Cleavinger, Cline, Cochran, Cope, Craig, Crain Cummin, Cunningham, Dunlop, Farrelly, Forward, Foulkrod, Fry, Helffenstein, Hopkinson, Houpt, Ingersoll, Jenks, Konigmacher, Long, M'Dowell, Meredith, Merrill, Nevin, Overfield, Porter, of Lancaster, Reigart, Ritter, Rogers, Russell, Shellito, Stevens, Weaver, Weidman, Woodward, Young, Porter, *President pro tem*—48.

Mr. M'CAHEN moved to postpone the further consideration of the resolution, as amended, until Monday next.

Mr. DARLINGTON demanded the yeas and nays on this motion, and they were ordered.

The question was then taken, and decided in the negative, as follows, viz :

YEAS—Messrs. Banks, Barclay, Barnitz, Bell, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Chandler, of Philadelphia, Chauncey Clarke, of Indiana, Cleavenger, Cline, Cochran, Craig, Cope, Cummin, Cunningham, Farrelly, Forward, Foulkrod, Fry, Hastings, Helffenstein, Hopkinson, Houpt, Ingersoll, Konigmacher, Krebs, Magee, Martin, M'Cahen, M'Dowell, Meredith, Merrill, Nevin, Overfield, Porter, of Lancaster, Reigart, Riter, Rogers, Russell, Shellito, Taggart, Weaver, Weidman, Woodward, Young, Porter, of Northampton, *President pro tem.*—50.

NAYS—Messrs. Agnew, Bedford, Biddle, Bonham, Brown, of Lancaster, Clarke, of Beaver, Clark, of Dauphin, Coates, Crain, Crawford, Crum, Curll, Darlington, Dickerson, Dillinger, Donagan, Dunlop, Fuller, Gearhart, Gilmore, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hyde, Keim, Kennedy, Kerr, Lyons, Mann, M'Call, M'Sherry, Merkel, Montgomery, Myers, Pennypacker, Pollock, Purviance, Read, Ritter, Rogers, Saeger, Scheetz, Scott, Sellers, Smith, Smyth, Snively, Stevens, Stickel, Thomas—56.

Mr. CHAMBERS moved to amend the resolution by inserting in the first line after the word "that," the words "on, and after Monday next," and in the second line to strike out the words, "to-morrow morning," which was agreed to—yeas 57—nays 28.

Mr. HIESTER moved to amend the resolution by striking ont "nine" and inserting "ten," which was negatived without a count.

The question recurring on the resolution as amended, a division of the question was called for by Mr. MERRILL, and the question being taken on the first branch of the resolution, it was adopted in the following form, viz :

Resolved, That on, and after Monday next, when this Convention shall adjourn, it shall adjourn to meet again at nine o'clock, and that such shall be the standing hour for meeting until otherwise ordered.

Mr. MANN then demanded the yeas and nays on the second branch of the resolution and they were ordered. The question was then taken on the second division, viz : "and will each day take a recess from one till three o'clock," and decided in the affirmative, as follows, viz :

YEAS—Messrs. Agnew, Banks, Bedford, Biddle, Bonham, Brown, of Lancaster, Carey, Chambers, Clarke, of Beaver, Clark, of Dauphin, Cline, Coates, Cope, Crawford, Crum, Cummin, Curll, Darlington, Dickerson, Dillinger, Donagan, Fuller, Gearhart, Gilmore, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Keim, Kennedy, Kerr, Lyons, Magee, Mann, M'-Call, M'Sherry, Merkel, Montgomery, Myers, Pennypacker, Pollock, Purviance, Read, Ritter, Rogers, Russell, Saeger, Scheetz, Scott, Sellers, Seltzer, Smith, Smyth, Snively, Stevens, Taggart, Thomas—62.

NAYS—Messrs. Barnitz, Bell, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Chandler, of Philadelphia, Chauncey, Clarke, of Indiana, Cleavinger, Cochran, Craig, Crain, Cunningham, Dunlop, Farrelly, Forward, Foulkrod, Fry, Helffenstein, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Konigmacher, Martin, M'Cahen, M'-Dowell, Meredith, Merrill, Overfield, Porter, of Lancaster, Reigart, Riter, Rogers, Shellito, Weaver, Weidman, Woodward, Young, Porter, of Northampton, *President pro tem.*—41.

So the resolution was agreed to.

Mr. BROWN, of Piladelphia county, offered the following resolution, which was laid on the table one day for consideration :

Resolved, That all questions relating to the hour of meeting and adjournment from day to day, shall be taken without debate and the yeas and nays being called.

Mr. BELL, offered the following resolution, which was considered and disagreed to:

Resolved, That the Convention do now proceed to the election of a Secretary, to supply the vacancy created by the resignation of Mr. SAMUEL GILMORE."

Mr. HASTINGS moved that two additional members be added to the committee on accounts, and also one to fill the place of Mr. SWETLAND, resigned.

The PRESIDENT, *pro tem,* then appointed Mr. STURDEVANT, to supply Mr. Swetland's place, and also Messrs. OVERFIELD and DILLINGER members of said committee.

The following resolution offered by Mr. REIGART yesterday, was taken up for consideration.

Resolved, That not more than one hour of any day shall be devoted to the considerations of motions and resolutions."

The resolution having been read a second time,

Mr. STEVENS suggested that the terms of the resolution should not extend to resolutions reported from committees.

Mr. REIGART acquiesced in the suggestion.

Mr. CHAMBERS suggested that the resolution be so modified as to embrace only "resolutions already reported."

Mr. BROWN, of Philadelphia county, knew of none to be reported. The resolution had better remain as it was.

Mr. STEVENS observed that there was now a resolution on file, of as much importance, as any that could come up for consideration, and which should be tested in that shape. He alluded to the resolution relative to annulling contracts. He trusted that when it should come up, there would be such an expression of opinion upon it that the people of this Commonwealth as well as the whole civilized world, might learn what are our sentiments on so important and vital a subject. He would be sorry to see debate cut off without having had any opportunity of discussing it. Gentleman knew that the previous question would cut off unnecessary debate, he therefore hoped that this rule would not be adopted.

Mr. BELL asked what was the character of the resolution?

Mr. STEVENS said that he alluded to a resolution on file to annul the charter of the Bank of the United States.

Mr. REIGART said that he intended to "except resolutions already on file," and modified the resolution accordingly.

Mr. BROWN, of Philadelphia county, remarked that there were no less than one hundred and six resolutions on file, and in order to test the sense of the Convention as to whether they were disposed to consider resolutions which had not immediate reference to amending the Constitution, he would move to strike out the exception of resolutions on file, so that one hour every day should be devoted to the consideration of resolutions, no matter what their character might be. He would not go so far as to say that there were not resolutions here, entitled to precedence, and of the greatest importance. What he meant to say was, that he conceived it to be the duty of the members of this Convention, especially to act upon such resolutions as immediately related to amendments to the Constitution. And the resolution, to which the gentleman from Adams, (Mr. Stevens,) had alluded, when it should come up, as an amendment to the Constitution, would receive that consideration to which it was entitled.

Mr. FULLER, of Fayette, asked if a committee had been appointed, or whether any report had been made on the subject of the resolution.

The CHAIR said that the resolution had not been acted on.

Mr. STEVENS remarked that the resolution to which he referred was No. 7. It was introduced by a gentleman from the county of Philadelphia. He, (Mr. S.) thought it would be a proper test question, as to whether the Convention were disposed to appoint a committee to consider the subject. He, for one, was desirous that it should be considered. and if the mover of the resolution did not call it up before the end of the session, he (Mr. Stevens,) would do it for him, in order that a solemn decision of the people of Pennsylvania, might be had on this very important subject; that it might go forth to the world, how far authority was like to be given to the Legislature to interfere, or overthrow contracts solemnly entered into. If there existed an intention to get rid of the resolution, he would, to prevent that result, bring it on in the shape of an amendment. He would repeat, that he deemed this subject one of too much importance, not only to the State, but to the whole commercial and monied world, to allow it to be passed over, without having the decision of this body on it.

Mr. DARLINGTON, of Chester, said that he was not disposed to throw any restraint upon our actions. He could see no good reason why we should preclude ourselves from considering a resolution, although more than an hour should be occupied in doing so. He was altogether opposed to this resolution, because he thought we should proceed with business much better without it.

Mr. BROWN, of Philadelphia county, said that he felt no other desire than to expedite the business before us as much as possible; but, he thought, that to bestow one hour a day to the consideration of resolutions would be sufficient, and four or five hours would remain to be devoted to subjects of importance. We had, this day, already occupied an hour and a quarter in debating this matter. He entertained the opinion that resolutions only which looked to amendments to be incorporated in the Constition, ought to claim so much of the time of the Convention. They should command not only four-fifths of our time, but the whole of it. The principle reason for fixing one hour for the consideration of resolutions, was to prevent the disagreeable necessity of calling the previous question for the purpose of putting an end to debate. He thought the adoption of a rule of this sort, would be salutary in its effects, and much time would be saved by it. Mr. B. moved to strike out the words, "except resolutions already on file."

Mr. CHAMBERS, of Franklin, remarked that the object of the mover of the resolution was a good one—to expedite and facilitate the business of the Convention. He, Mr. C. believed that some rule was necessary to limit the action of the body, to the more important business before it. It did appear to him, however, that by the resolution, as now modified, we should gain nothing. The terms of it were, that not more than one hour shall be devoted to the consideration of resolutions, except those on file. There were, at this time, no less than one hundred and seven resolutions on file, and all of them, in the opinion of those by whom they were introduced, of importance. By the resolution in question, then, all these resolutions were to be considered, without any limitation as to time, and

many of them would consume a good deal. With regard to motions, it was for the Convention to take them up or not. Believing that the object which the gentleman had in view, would not be attained, he moved that the further consideration of the resolution be postponed for the present.

Mr. M'CAHEN, of Philadelphia county, concurred in the remarks of the gentleman from Chester, (Mr. Darlington,) for he did not see any necessity at all for the resolution. He, therefore, did vote that it be postponed. The Convention could easily, if they chose to do so, get rid of debate on resolutions. He could not believe that business would be facilitated by the adoption of the resolution. In regard to the resolution referred to by the gentleman from Adams, (Mr. Stevens,) he would merely say that he thought the whole subject would be brought forward in another shape, when the question of the Legislative power should come up. The subject of vested rights, would then be discussed, and an opportunity would be afforded the gentleman of calling the resolution up.

Mr. STEVENS moved to amend the motion to postpone the resolution by inserting the word "indefinitely." The question was then taken on the motion, and agreed to, and the resolution was then postponed indefinitely.

SIXTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. CHAMBERS in the chair, on the report of the committee to whom was referred the sixth article of the Constitution.

Mr. READ, of Susquehanna, moved to amend the report, by inserting a new section, to be called "section sixth," as follows, viz:

SECT. 6. An Auditor General and an Attorney General, shall be elected by the joint vote of the members of both houses of the Legislature, for the term of two years. Vacancies shall be filled by appointment of the Governor, to continue until a successor shall be elected as aforesaid.

Mr. R. observed that it was not his intention to go into a debate on the subject. These matters had been so long before us, that every gentleman must have made up his mind on them. He would ask for the yeas and nays on the question, and leave it to its fate.

Mr. DENNY, of Allegheny, said that he could have wished to have heard some good reason alleged for the change proposed by the gentleman from Susquehanna, (Mr. Read.) He (Mr. D.) had supposed that from the character of the duties of the Attorney General, and the fact of the Governor having to consult him frequently, that he would have been permitted to choose his own Attorney General. It was his opinion that those officers should act harmoniously, and that the Executive should have every confidence in him. He knew not what to say in relation to the Auditor General. The office was one of much importance and the duties were very laborious.

The Legislature had not hitherto chosen any public officers, except a State Treasurer, and bank directors, and in their appointments they had been not so successful as to render it desirable that they should have more to make. These officers had, as every one knew, been chosen generally more in reference to political influence, than to their peculiar qualification for the duties which they had to discharge. He would be sorry to see the Auditor General appointed in the same manner.

Mr. Porter, of Northampton, was sorry that he could not see the weight of the argument of the gentleman from Susquehanna. His proposition overlooked the fact that our system of officers, in relation to the concerns of the Treasury, was one of checks and balances. That system could not be disturbed withont impairing the responsibility of the officers. The present office of Auditor General formerly consisted of two separate offices, which were consolidated in 1807, and their duties devolved upon an Auditor General. It might be necessary hereafter to transfer a part of the duties of the Auditor General to some other office. It was impossible to predict the changes which might be made; but our system had been, in order to secure a proper degree of responsibility, to have the State Treasurer elected by the representatives of the people, and responsible to them, and to make the Auditor General responsible to the Executive, by whom he was appointed. To give the choice of Auditor General to the Legislature, would destroy this system of checks and balances. Another objection to the proposition was, that all officers belonging properly to the cabinet, ought to be appointed by the Governor. It would be impossible for the Governor to get along with a divided cabinet; and no harmony of action or feeling could be expected among them, unless they owed their appointments to the same source. Let the Executive take the responsibility of making all the cabinet appointments, and answer to the people for their conduct in office.

Mr. Bell said, the proposition had been sprung upon us suddenly and unexpectedly. It was one of great importance, and he was not prepared to decide upon it. To give an opportunity for its consideration, he moved its postponement for the present.

The chair having pronounced this motion to be out of order, Mr. Bell asked how he could attain his object.

Mr. Darlington remarked that his colleague's object would be best attained by the rejection of the amendment, and the subject could be, if necessary, taken up again hereafter.

Mr. Read had not intended, he said, to address the committee on this subject, but being called on for his reasons, he would briefly say, that this proposition was not, as the gentleman from Chester supposed, now suddenly sprung upon the Convention for the first time. It was offered in the place of section 8, which had been negatived. Its object was to reduce the patronage of the Executive, which was by no means a new object here. We had already taken from the Executive the power of appointing any officers, except a Secretary of State, and we had made no other provision for their appointment. Unless some provision be made, the offices must cease to exist. These reasons, it appeared to him, were amply sufficient for the amendment. The proposition was substantially the same with the 8th section, but was more definite.

Mr. Stevens said the gentleman seemed to misunderstand the present predicament in which these appointments stood. They were provided for, under a clause which we had adopted. We had adopted a section providing that all officers whose appointment is not provided for in this Constitution, shall be appointed as shall be directed by the Legislature.

Mr. Ingersoll moved to amend the amendment by striking out the

words "joint vote of the members of both Houses of the Legislature," and "two years" and inserting in lieu thereof, the words "annually by the people;" and thereupon he asked the yeas and nays which were ordered.

The question was then taken and decided in the negative, as follows, viz:

YEAS—Messrs. Banks, Brown, of Philadelphia, Crain, Dillinger, Donagan, Foulkrod, Helffenstein, Ingersoll, Keim, Lyons, Martin, M'Cahen, Nevin, Overfield, Read, Riter, Ritter, Rogers, Scheetz, Sellers, Shellito, Taggart, Weaver, Weidman—24.

NAYS—Messrs. Agnew, Barclay, Barnitz, Bedford, Bell, Biddle, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Cochran, Cope, Craig, Crawford, Crum, Cummin, Cunningham, Curll, Darlington, Denny, Dickerson, Dunlop, Forward, Fry, Fuller, Gearhart, Gilmore, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Jenks, Kennedy, Kerr, Konigmacher, Krebs, Long, Magee, Mann, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Myers, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Royer, Russell, Saegar, Scott, Seltzer, Smith, Smyth, Snively, Stevens, Stickel, Thomas, Woodward, Young, Porter, of Northampton, *President pro tem*—83.

The question being on Mr. READ's amendment?

Mr. BELL moved to strike out the words "Attorney General," which was negatived by a vote of 32, to 40.

Mr. AGNEW moved to amend the amendment by striking out all after "section 6," and inserting in lieu thereof, the following:

"The Governor shall, by and with the consent of the Senate, so long as the offices exist by law, appoint and commission for a term of three years, a Secretary of the Land Office, a Surveyor General, an Auditor General, an Attorney General, and other chief officers, having, at the seat of government, the management of such principal executive departments, as may hereafter be established by law."

Mr. AGNEW said, these officers under the present Constitution, were appointed by the Governor; but, by a provision which we had made, their appointment was taken from him. If we left the matter here, the Legislature would have the power not only to make the appointments, but they could create offices and fill them. The appointment of these officers must be provided for, either by the Constitution or by the Legislature. If the committee should choose, he would not object to striking out the words "by and with the advice and consent of the Senate;" and the matter would then be left as in the present Constitution: the Legislature would create the offices, and the Governor would appoint the officers.

The motion was negatived.

The question was then taken on the amendment of Mr. READ, and determined in the negative, yeas 39, nays 61, as follows:

YEAS—Messrs. Banks, Barclay, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Crawford, Cummin, Curll, Donagan, Foulkrod, Fuller, Gilmore, Hastings, Hayhurst, Helffenstein, High, Keim, Krebs, Magee, Mann, Martin, M'Cahen, Nevin, Overfield, Read, Riter, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, Smyth, Stickel, Taggart, Woodward.—40.

NAYS—Messrs. Agnew, Barnitz, Biddle, Brown, of Lancaster, Carey, Chambers, Chandler, of Philadelphia. Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Coates, Cochran, Cope, Craig, Crum, Darlington, Denny, Dickerson, Dillinger, Dunlop, Farrelly, Fry,

Gearhart, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Kennedy, Kerr, Konigmacher, Long, Lyons, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Myers, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Royer, Russell, Seager, Scott, Snively, Stevens, Thomas, Weidman, Young, Porter, of Northampton, *President. pro tem.*—61.

The Convention proceeded to the consideration of section 10, of the report, as follows:

"All officers for a term of years, shall hold their offices for the terms respectively specified, only on the condition that they so long behave themselves well."

Mr. BELL moved to amend by adding the following:

"And they may be removed on conviction of misbehavior in office or of any infamous crime, or on the address of both Houses of the Legislature."

Mr. BELL said this provision was only applicable to judges under the old Constitution. The county officers could be removed by the Governor. The new provision looks to the appointment of the officers for a term of years by the people; and places them out of the control of the Executive, both as to their appointment and their removal. In case they should be found incompetent, or should be convicted of any infamous crime, there was no power by which they could be removed, before the expiration of their term. There should be a power to remove a dishonest or an incompetent man, and the amendment proposed to authorize their removal on conviction of official misconduct or of any infamous crime, or on the address of the representatives of the people.

Mr. STEVENS moved to amend the amendment by striking out the words "or on address of both Houses of the Legislature." He thought, he said, the Legislature should have no voice in the removal of local officers not appointed either by the Legislature or the Governor, but by the people.—We might as well not give their election to the people at all, as to give the Legislature this power to remove them. They should not be removed except for malversation or the conviction of some infamous crime.

Mr. BELL said, there might be instances of malversation, for which an officer could not be removed in any other way than by address. He asked the yeas and nays on the motion and they were ordered.

Mr. STEVENS said, it would be recollected that the officers intended to be operated upon by this amendment, stood in a very different footing from those in the present Constitution, whose removal were provided for by the address of the Legislature. The present constitutional provision was, that justices of the peace should be appointed during good behavior, but might be removed on the address of both Houses of the Legislature. There was some good reason for this provision; because men might be appointed who were well known to be infamous characters, wholly incompetent to perform the duties of the office, but they might not be liable to prosecution for any thing they might do, and if the people had not this mode of getting rid of them, they could not be removed during their lives. Elections by the people, however, were for short terms, three and five years, so that incompetent men could soon be got rid of, and if they were guilty of any criminal offence or great misdemeanor, they could be got rid of by the ordinary mode. If, however, the people elected incompetent

men and such men as they ought not to have elected, they have the remedy in their own hands and can remove them when their term of service expires. He could see no evil, but that which could be remedied by the people themselves, and this right ought not to be taken from them and put into the hands of the Legislature, but few of whom reside in the district in which these officers may reside. He would leave it to the people to judge of the competence or incompetence of men to fill these situations, and he would not raise up a restricting and controlling power in the Legislature. He was, therefore, entirely opposed to taking from the people the right and the power to remedy this evil. If you place this power in the hands of the Legislature, what may be the consequence? Why, you may find your Legislature in times of high party excitement, engaged from year to year and from month to month, in attempts to remove individuals elected by the people by the address of the Legislature. Who could sanction this? Or who could think of introducing a proposition which might lead to this? It was a doctrine which cannot be sanctioned by the Convention, as it is entirely at war with the principle that the people are the sovereigns, and ought to govern. None of the evils suggested by the gentleman from Luzerne can arise, because all these officers who are elected by the people have to give bond and security for the faithful discharge of the duties of their offices. All sheriffs, prothonotaries, registers, &c. will be required to give bond and security, so that no such evil can arise, and he apprehended that it would be trenching upon the rights intended to be conferred on the people, to place this supervisory power in the Legislature. It would be seen that there was a great difference between this amendment and the clause in the present Constitution, and such being the case he hoped this might not be adopted.

Mr. Bell then accepted the amendment of Mr. Stevens to strike out all after the word "crime" as a modification of his proposition.

Mr. Woodward then moved to amend the amendment by adding to the end thereof, the words "on the address of both Houses of the Legislature." It seemed to him to be entirely proper to retain this provision in the section. Justices of the peace were elected for five years. Suppose then, that one of these officers should become incompetent to discharge the duties by infirmity, insanity or any other calamity, the number being limited, how were the people to be supplied with these officers? The officer may become deaf, blind or palsied, so as to be totally incapable of discharging the duties of his office. This being the case, was there to be no provision whereby his place can be filled, and the public given the benefit of a competent man? He thought that there must be somewhere in the government a power to dispense with the services of these officers, not as a penalty, but as a benefit to the people, who were entitled at all times to have competent and efficient officers. He knew of no mode so proper for removing these officers, as giving the Legislature authority to address the Governor for their removal. This power in his opinion, ought to be retained, because if it was excluded, there was no power under the Constitution for removing an incompetent officer. Justices of the peace in some parts of the country were very important officers; they receive large sums of money, and the whole community is interested in their good conduct. Then if any of these officers become grossly incompetent by intemperance, for instance, were they not to be

removed? Were they to hold their offices for five years to the great inconvenience of the community? He trusted not. This provision had been in the Constitution for a long time, and he never had heard of its being used as a means of proscription of any man. So far from it, it was a salutary clause which he was not willing to part with, and he did not believe the people would be willing to give it up. He could not imagine a case in which it could operate to the prejudice of the people. He did not think that a single instance could be found in Pennsylvania, where this power had been used for the purpose of oppression, and he did not apprehend that it ever would be used for such purposes. He regretted that the gentleman from Chester had accepted the amendment proposed by the gentleman from Adams, because he intended to vote for it but he could not now do so.

Mr. BELL agreed entirely with the gentleman from Luzerne, (Mr. Woodward,) so far as related to justices of the peace, and he intended, when we came to second reading, to move a provision that the Governor should have the privilege of removing them in certain cases. It would be seen, however, that the present clause related to all officers who were appointed for a term of years, to prothonotaries, clerks, registers, &c.—All these officers were to be elected by the people for a limited term, and it would, in his opinion, be improper to have this provision applying to them. All these officers can act by a deputy, but with respect to justices of the peace, it was different, and he should move an amendment hereafter, to provide for the removal of these officers. It appeared to him that we ought not to append this provision to the clause in relation to removing these officers by the address of the Legislature. It would answer better, to be inserted in the clause relating to justices of the peace, and when we arrived at that, on second reading, he pledged himself to move it.

Mr. MERRILL said, that the provision on this subject in the present Constitution, related only to judicial officers, justices of the peace, and judges—and it seemed to him, as being entirely improper to place this restriction over the people on the ground of the incompetency of the officers whom they may select. The fundamental principle of our government, is, that the people are capable of self government, and that they were entirely capable of making judicious selections of their own officers, without being placed under the supervision of any other tribunal, yet by this amendment it is to be presumed that the people may use this power conferred upon them improperly. With regard to the judicial officers, he thought it would be right enough, as such a provision was to be found in the old Constitution, but he looked upon it as entirely improper to attempt to exercise such a power as this, over the action of the people themselves, and for this reason he must oppose it.

Mr. WOODWARD said it was very true that this provision was in the judicial article, and that one which related to justices of the peace in the present Constitution, but he could see no impropriety in extending it to all officers, as the amendment he submitted proposed. If the amendment was proper so far as it related to justices of the peace, it might as well be inserted here as any place. He knew of no better place to insert the provision than in this section. As to the argument used in relation to placing this power over the people, he could not see the force of it; be-

cause he did not think that the Legislature, except in extreme cases, would exercise it. It was well known that there were many cases where officers ought to be removed, when they could not be reached, unless a provision of this kind were adopted; and it was not to be expected that it would ever be used as an engine of oppression. It seemed to him that the proposition contained an important principle, which ought to be lodged somewhere; and it should not only apply to Justices of the Peace, but to all officers appointed for a term of years. There were many cases in which it ought to apply as well as to Justices of the Peace. Take for instance a Prothonotary, which was a very important office; suppose you elect one of these officers, and the first month of his election he becomes a grossly intemperate man, what is to become of the money paid into his hands by parties to suits? He believed it had been decided that this officer's security was not responsible for money paid into his hands by parties to suits in courts, and thus many unfortunate parties may be swindled out of their money without the means of redress. Were such officers to be continued for three years without the means of redress? Was the money of the widow and the orphan to be placed in his hands and squandered with impunity, because we must not place these restrictions upon officers elected by the people. A man may be an honorable, high-minded man when elected, and may become perfectly worthless before his term of service expires. Was there then to be no means of removing such persons? Was there to be no means of disposing of such officers, although the interest of every man required that they should be removed. The officer has ample protection, and he hoped the proposition might be adopted. It will be recollected that the number of these officers will be reduced by the amended Constitution; and if there are incompetent officers in any of the townships it will be an inconvenience to the people. As the number of officers will be limited, it is necessary that they should all be competent, so that the people might not be obliged to suffer inconvenience by the incompetence of any of these officers. He thought it of the first importance that this power should be lodged somewhere, and he knew of no place in the government where it could be so safely lodged as in the hands of the representatives of the people, to be exercised immediately under their eye. He trusted, therefore, that the amendment might be adopted. Mr. W. then called for the yeas and nays on his amendment, which were ordered.

Mr. Darlington doubted whether this general provision would answer the purpose of the gentleman who moved it. He doubted whether any general provision could be proposed, which would answer for every class of officers. The object seemed to be to provide some speedy mode of removal for Justices of the Peace. For his own part, he would prefer some local remedy, such as that proposed by the gentleman from Susquehanna on yesterday, to leave the matter to a grand jury to regulate. He was opposed to the provision in its present form. There were a great many officers to which it could not apply, and he apprehended if it was adopted in its present form, it would be giving both branches of the Legislature the power to remove the Governor and Secretary of the Commonwealth. Now, as he understood the design of gentlemen, it was to place the Secretary of the Commonwealth entirely in the hands of the Governor. Well then, do you intend, when party politics run high,

and when the Legislature may be in opposition to the Executive, to give them the removal of this officer whom they have no power to appoint? He was sure this could not be the design of gentlemen, but such would be the effect of this proposition. He thought the better plan would be to let this section pass as it was without the amendment of the gentleman from Luzerne, and then we can afterwards make such provision in each case as may seem to be right. He did not, however, think that a general provision would answer any purpose at all.

Mr. HOPKINSON had an objection to the proposition of the gentleman from Luzerne, and his objection was that it fell short of the object intended to be attained by it; it does not go far enough. The evil complained of is, that when officers are elected they cannot be removed for three years, but the remedy is such a one that it cannot be brought to operate for several months. Now if the gentleman would find a remedy for this evil, which would be effectual, he might go for it; but he could not see wherein any great benefit was to be derived from the present proposition.

Mr. BELL wished to say one word in reply to the case cited by the gentleman from Luzerne. That gentleman put the case of a fraudulent application of money by a Prothonotary. This was a misdemeanor in office, for which the officer may be indicted and convicted, if the charge can be made out. The only case put by the gentleman from Luzerne is provided for. The employment of moneys paid into the hands of these officers to other purposes, was a misdemeanor in office, which was provided for. And as to removing men on account of their moral character, he had no idea of it so long as they performed the duties of their offices faithfully. He had no idea of having the Legislature remove a man because he was a drunkard. His desire was, that it should have nothing to do with the morals of public officers, so long as they performed their duties; because the power was too easily abused to be trusted in this way.

Mr. BANKS considered that this matter had been fully argued by those gentlemen who had gone before him; and he should not now have risen, had it not been for a remark of the gentleman from Chester, (Mr. Bell,) in relation to the case put by the gentleman from Luzerne, relative to Prothonotaries. He did not understand the law to be as the gentleman from Chester had stated it, in relation to mal-appropriations of money by Prothonotaries. The case supposed by the gentleman from Luzerne, was that of moneys being paid into the hands of the Prothonotaries where no act of assembly provided for that mode of payment; and in that case, although the officer may have disposed of the money, his security could not be held for it, and it could not be looked upon as a misdemeanor in office, according to the present construction of that term.

Mr. BELL considered that the Sheriff would be liable for the money if paid into Court, or the party paying it over.

Mr. WOODWARD explained, that he meant cases where the parties had paid over the money without the order of the court. He knew if it had been paid by the order of the court, that the parties would have been released.

Mr. BANKS said, that in the cases referred to by the gentleman from Chester, the party was still held liable. He is still liable for the money paid into the hands of the prothonotary, but was the prothonotary to be

allowed to take this money and misapply it, and abuse the confidence the individual had placed in him, without having any provision by which he might be removed for such conduct. It seemed to him to be so just and proper, that no gentleman ought to hesitate a moment in making some such provision. He saw some objections to this amendment, such as those suggested by the gentleman from Philadelphia, (Mr. Hopkinson,) and the gentleman from Chester (Mr. Darlington,) but still, he hoped some provision might be made to meet the case. He knew it now applied to all officers who were elected, when it certainly could not be intended to apply to the Secretary of the Commonwealth or Governor. Perhaps a provision to except these two officers might answer, and some such provision was certainly necessary. As to the Legislature being the best depository of this power, he might say that he had no more confidence in them than the gentleman from Adams (Mr. Stevens,) had. He was very willing, however, that they should possess this power. Justices of the peace, as well as other officers, may refuse to pay out moneys which may have been entrusted in their hands, and, at the same time, you cannot convict them of having committed an infamous crime; but according to the act of Assembly now in force, if one of these officers can be convicted of a misdemeanor in office, upon that fact being made known to the Governor, he is required to remove him. Now as he understood the gentleman from Luzerne, his object was to devise some easy and convenient mode, by which the people might have these officers removed.—The Legislature being made up of the representatives of the people, it came as near to them as any other power he knew of, and he took it that this would be the most safe depository of this power, which, in his opinion, was so very necessary. Suppose for instance, a prothonotary refuses to do the duties of his office, totally neglects it, becomes a debauchee, or becomes otherwise totally unworthy of the place he holds, is he to be left without the pale of the law, so that he may avoid conviction? He trusted not. But unless some such provision as this was made, these officers may hold on to their offices for three or five years, and set the people at defiance. Surely, this was not to be tolerated. He was not now prepared to propose an amendment which would meet the case, but perhaps some other gentleman might. As it was just about the time at which the committee generally rose, some amendment might be prepared by its next sitting.

Mr. Curll then moved that the committee rise, which motion was decided in the negative, yeas 41, nays 46.

Mr. Cunningham said, that if the gentleman from Luzerne, would make his amendment conform to the present Constitution, he might vote for it; that is, that these officers might be removed on the address of two thirds of the Legislature. If this was not done he must vote against the amendment, as he was not willing to put the Legislature above the people. He believed one of the great objects of calling this Convention, was to restrict the Legislative and Executive departments of the government; therefore, he could not consent to increase the power of one of these departments. Now it is well known that parties change in the different counties in the State, and we know that the popular doctrine is, "to the victors belong the spoils of the victory." In some counties, therefore, a man may be elected prothonotary this year by the party in power, and

that party may be out of power the next year. The party in power then, who were opposed to this individual, may send petitions to the Legislature to have him removed, and the mode of removal, is to be the address of the Legislature. Now we all know that men generally, act in such cases upon party bias, and if the Legislature shall have power to address the Governor without assigning a reason for his removal, the officer may be removed when there was no just ground for it. He was, therefore, opposed to this amendment as at present proposed. He desired the will of the people to be regarded, and it was easy to say that the Legislature shall not have this power unless, upon evident cause being shown. One of the great objects for which this Convention was called, was to take away the patronage of the Executive and power of the Legislature, and confer those rights and privileges on the people which belong to them, therefore, to allow the Legislature to exercise this power, would be to contravene the very object for which this Convention was called together. We know that the Legislature is frequently carried away by party motives; that being the case, persons may be removed by the Legislature, who were elected by the people, merely because they are on the opposite side in politics. In cases of petitions being presented from any county for the removal of an officer, it may be said that the representative from that county will be consulted. If it is granted that this will be the case, this representative may be opposed in politics to the officer, and the opinion of this representative was to be taken in opposition to the will of a majority of the people of the district. He could not go for any such proposition. If, however, the gentleman would modify it so as to require two thirds of the Legislature to address the Governor, he would have no objection to vote for it.

The question was then taken on Mr. Woodward's amendment, and decided in the negative—yeas 42, nays 64—as follows:

YEAS—Messrs. Banks, Barclay, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Crain, Crawford, Cummin, Curll, Donagan, Foulkrod, Fuller, Gearhart, Hastings, Helffenstein, High, Hyde, Ingersoll, Keim, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, Overfield, Riter, Ritter, Rogers, Sellers, Scheetz, Shellito, Smith, Smyth, Stickel, Taggart, Weaver, Woodward, Porter, *President*—42.

NAYS—Messrs. Agnew, Barnitz, Bell, Biddle, Brown, of Lancaster, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Coates, Cochran, Cope, Craig, Crum, Cunningham, Darlington, Denny, Dickerson, Dillinger, Dunlop, Farrelly, Fry, Gilmore, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Houpt, Jenks, Kennedy, Kerr, Konigmacher, Long, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Myers, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Read, Royer, Russell, Saeger, Scott, Seltzer, Snively, Stevens, Thomas, Weidman, Young—64.

Mr. WOODWARD moved to amend the amendment by inserting after the word "crime," the words following:

"And justices of the peace, prothonotaries and clerks of the several courts, may be removed by the Governor, on the address of two thirds of both Houses of the Legislature."

Pending which amendment, Mr. DUNLOP moved that the committee rise, which motion prevailed; yeas 52, nays 33.

The committee accordingly rose, reported progress, and obtained leave to sit again,

And the Convention adjourned.

FRIDAY, October 20.

Mr. Martin submitted the following resolution, which was laid on the table, for future consideration, viz:

Resolved, That the freemen of the city of Philadelphia, and the freemen of the county of Philadelphia, shall each elect one sheriff, and one coroner.

Mr. Konigmacher, submitted the following resolution, which was laid on the table, for future consideration, viz:

Resolved, That twenty copies each, of the Debates and Journal, English and German, of this Convention, be deposited in the State Library, and that the balance be distributed among the respective members of this Convention.

SIXTH ARTICLE.

The Convention resolved itself into a committee of the whole, Mr. Chambers in the chair, for the purpose of resuming the consideration of the report of the committee on the sixth article of the Constitution.

The question before the committee, being on the motion of Mr. Bell, to amend the tenth section, by adding to the end of it, the following words viz: "and may be removed on conviction of misbehaviour in office, or of any infamous crime."

And the question pending, being on the motion of Mr. Woodward, to amend the amendment of Mr. Bell, by inserting after the word "crime," the words "and justices of the peace, prothonotaries and clerks of the several courts, may be removed by the Governor, on the address of two-thirds of both Houses of the Legislature."

It was decided in the negative—ayes 40, noes 54.

The question recurring on the amendment moved by Mr. Bell;

Mr. Mann moved to amend the amendment by striking out the word "may," and inserting in lieu thereof, the word "shall;" and the amendment being accepted by Mr. Bell, as a modification of his amendment, the amendment was so modified accordingly, and was then agreed to; and the report of the committee on the tenth section as amended, was adopted.

The committee then proceeded to the consideration of the report of the committee, being the eleventh section, in the following words, viz:

"Sect. 11. All officers shall give such security for the faithful discharge of their respective duties, as shall be directed by law."

Mr. Reigart enquired if this section was not susceptible of a construction which would apply it to the Governor. Under this section, it appeared to him that the Executive might be called on to give security. He thought it better that the section should be negatived, or made more special.

Mr. Read in reply, stated, that as the committee on the sixth article understood the section, and according to his own understanding of it, it only applied to such officers, as the Legislature might direct. If, in the

opinion of the Legislature, the Governor ought be called on to give security, that body could say so, and give such direction to the section.

Mr. STEVENS said he saw no necessity for this section. Its only tendency was to create confusion. The Legislature had already power enough, without having this thrown into their hands. If the section were adopted, all officers would be required to give such security as the Legislature should direct; therefore, under its operation, all would have to give some security, the section did not read "all *such* officers," &c. but "*all* officers." He did not see any necessity for the section.

Mr. BELL said, that for the purpose of removing all ambiguity on the subject, he would move to amend the section by striking out all after the words "section 11," and inserting in lieu thereof as follows, viz: "The Legislature may by law provide that officers shall give security for the faithful discharge of the duties of their respective offices, and the amount and nature of such security."

If, said Mr. BELL, the committee think that to give the Legislature this power is unnecessary, they can reject the amendment: if they think it necessary, the adoption of the amendment would render the section less ambiguous. The only question is, if there exists any necessity for giving the Legislature this authority.

Mr. DARLINGTON said, the whole seemed to be unnecessary. No difficulty had arisen under the construction of the Constitution, as it stood at present, and this section would only have the effect of encumbering it. He was of the opinion that the wiser plan would be for the committee to reject both the amendment and the section.

The question was then taken on the motion to amend, and decided in the negative; and the report of the committee as regards section 11, was also disagreed to.

The committee proceeded to the consideration of the twelfth section as follows, viz:

"SECT. 12. All commissions shall be in the name and by the authority of the Commonwealth of Pennsylvania, and shall be sealed with the State seal, and signed by the Governor."

Mr. WOODWARD moved to amend the section in the second line, by striking out the word "shall." In all other respects the language of the section was in the precise words of the old Constitution, and he saw no necessity for the change.

Mr. STEVENS suggested that when a proposition was made, to make an unnecessary change by way of amendment to the old Constitution, it would be the best way to reject it.

Mr. READ said that the word "shall" had crept in, he scarcely knew how. It had been the intention of the committee that the section should be a copy of the old Constitution. The section had been introduced for the purpose of having it put in an engrossed form, as had previously been settled. It was of no consequence, whether rejected or not.

Mr. WOODWARD understanding that the effect of the rejection would be to leave the old Constitution just as it is, withdrew his motion to amend.

The question was then taken, and the report of the committee as to section 12, was disagreed to.

The committee proceeded to the consideration of the thirteenth section as follows:

"SECT. 13. No member of Congress from this State, nor any person holding or exercising any office of trust or profit, under the United States, shall at the same time hold or exercise any office in this State, to which a salary is, or fees or perquisites are by law annexed, and the Legislature may, by law, declare what State offices are incompatible."

Mr. SCOTT said that this section appeared to him to introduce a new principle in excluding members of Congress. Whether it was the intention of the committee to extend the provision as far as the words of the section seemed to imply, he did not know. Being of opinion that the section as it stood, was liable to much objection, as calculated to exclude many from office, whose services would be valuable to the Commonwealth, he moved to amend the report in the fourth line, by striking out the words "or fees or perquisites are."

Mr. REIGART expressed a hope that the amendment would not be agreed to. The whole section appeared to him to be unnecessary. The most advisable mode, he thought, would be to reject the section, and amend the Constitution in a more suitable part. This provision was out of place here, and he hoped the committee would consent to negative it.

The question was then taken on the motion of Mr. SCOTT, to amend, and was decided in the negative; and the report of the committee on the 13th section was disagreed to.

The committee proceeded to the consideration of the 14th section as follows:

"SECT. 14. The freemen of the Commonwealth shall be armed, organized and disciplined for its defence, when and in such manner as the Legislature may hereafter by law direct. Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service."

Mr. BROWN, of Philadelphia, moved to amend the section by striking out all after the word "direct," in the third line as follows, viz; "Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service."

Mr. PORTER, of Northampton, trusted that the amendment would be agreed to. To whatever decision the Convention might desire to come on this subject, this was certainly not the place for it. The memorial of the class of persons which this section proposed to protect, had been referred to the committee on the bill of rights, and a report had been made (numbered 21,) which would be taken up for consideration, when that article should come up for deliberation and decision.

Mr. BIDDLE expressed himself as opposed to the amendment, and to the whole section, for the reasons which had been assigned by the gentleman from Northampton, and also, because he considered it unnecessary to insert in the Constitution of Pennsylvania, any provision as to the militia. The Constitution of the United States, gives the authority to Congress to provide for arming and disciplining the militia. It would be thus perceived that the whole power and jurisdiction over the militia had been yielded to the general government. Congress has to direct the manner in which the militia shall be armed and disciplined. Therefore, this

provision in the Constitution of Pennsylvania, appeared to him to be superfluous. Further experience had shown that the provision in the present Constitution, so far from being productive of good, had in fact, been mischievous. When it was said that the militia musters were mischievous in their operation, the answer was that the Constitution rendered them necessary. Therefore these musters could not be discontinued. The objections on this ground, however, are weak in comparison to others which might suggest themselves to every reflecting mind. The section is calculated to oppress the religious scruples of a particular portion of the community, who are pre-eminently entitled, if any class of the people can be so entitled, to protection. It bears hard on the society of Friends, who came out with William Penn, to teach and practice peace, good will and forbearance in all forms, and who had done more to introduce order and regularity throughout the Commonwealth, than any other set of men. Have these people suffered? Have they been oppressed by the operation of this system? It was only necessary to refer to the vivid picture presented to the Convention by his colleague, (Mr. Cope,) previous to the adjournment of the Convention for the late recess. The picture of the cradle torn from under the sleeping infant, by the barbarous hands of the collector of militia fines, was of itself, sufficient to make us determine not to continue this provision in the Constitution. He had not risen to make a speech, but he hoped we should never hereafter call on those who have religious scruples on the subject to bear arms, or to pay the penalty for exemption. He hoped. if any foreign invader should be rash enough to set foot on American soil, that he would be instantly driven back by the spontaneous energies of our citizens. But there was no danger to be apprehended. There was no necessity for this section, and he hoped the whole amendment would be stricken out.

Mr. Smyth, of Centre, rose and said: Mr. Chairman, I do not concur in the opinions which have been expressed by the gentleman from the city of Philadelphia, (Mr. Biddle.) It appears that he is willing to give up the right of the State government, and to leave the defence of the soil entirely to the government of the United States. This is a position in which I cannot agree. It appears to me that a State as large as Pennsylvania, ought to take care of herself. The rights which she has given up to the United States, should be preserved to the United States, but, at the same time, Pennsylvania should be prepared to defend her own soil, if necessity should ever require her to do so. This is one reason why the militia of our State ought not to be lost sight of. The gentleman has drawn a doleful picture of the evils attending militia parades. It may be true, that in many instances such evils do exist; but is there any reason that the whole system should be abandoned because of the behaviour of some few? Sir, I should presume not. This right of defence is too dear to the State of Pennsylvania ever to be given up, and I think it is necessary that some provision of this kind should be incorporated in your fundamental law. The gentleman has adverted to the history of a case submitted to the Convention, by the gentleman from the city of Philadelphia, (Mr. Cope,) previous to our adjournment in July last. I have listened to that statement; I have also listened to the accounts which have been given of the good deeds of the society of Friends, and of the wealth which they have in their possession. Now is it, or is it not right that that wealth should be defended? If it is right, by whom should it be defended? Is

it by him who earns his daily bread by the sweat of his brow, that the property of the society of Friends, is to be defended? They have undoubtedly rights as well as other men, but I apprehend it is not the duty of this Convention to enact laws which shall exempt them entirely from being called upon to defend the soil on which they live. I think it would be wrong to do so. There may be some cases of mal-conduct on the part of officers appointed to collect fines. But this is not the fault of the law; and if any thing is wrong, if any individual is convicted of improper conduct in his office, the law is open to the injured party, and will redress his wrongs. It is right that the law should do so, but I cannot consent to surrender or set aside the fundamental law of the State. It is a law on which much depends. It is our duty to prepare ourselves in time of peace, for any contingency of war that may hereafter arise. We know not what is to come; we cannot tell "what a day may bring forth," and I apprehend this Convention will not willingly give up that part of the Constitution of the State which says, that the militia of the State shall be armed and disciplined at the will of the Legislature. I think it is a fundamental law which we ought to preserve, and for the reasons which I have stated as well as for others, which are satisfactory to my own mind, I shall oppose this section.

I have been at the trouble, continued Mr. S., of taking an account of the different States which have passed laws nearly similar to those which have been adopted in Pennsylvania. These States are Illinois, Virginia, Mississippi, Alabama, Missouri, Louisiana, Indiana, Maine and North Carolina. All these States have taken care that there should be incorporated in their fundamental laws, an article empowering the Legislature to arm and discipline the Militia, whenever they should think it necessary to do so. For my part, I am desirous that the section now proposed should be negatived, and that the entire section of the old Constitution should stand as it now is.

Mr. Bell, of Chester, said he had listened with much attention to the remarks which had been made by the gentleman from the city of Philadelphia, (Mr. Biddle;) and he (Mr. Bell) could not but regret that the question of conscientious scruples had been thus prematurely introduced into this debate. He had supposed that the discussion of a question so delicate, and so deeply interesting to one of the most respectable religious sects in the State of Pennsylvania, would have been reserved until the Convention had reached the ninth article of the Constitution, commonly denominated "the bill of rights." He would not now say on which side he should be found. In all likelihood, however, he would be found advocating, with his friend from the city of Philadelphia, the rights and conscientious scruples of this highly respectable body of our citizens. But for the present he should vote in favor of the motion to strike out all after the word "direct," reserving himself for the discussion when it should come up in its proper place.

On the subject of militia trainings—of the organization of the militia, and the necessity of a Constitutional provision for these objects, he thought there could not be two minds, nor did he believe that the gentleman from the city of Philadelphia would find another member of the Convention who would go with him in the views he had expressed. To be sure, the power was given to the United States, by the Constitution,

"to provide for organizing, arming and disciplining the militia;" but it was conceded by every one that the States have concurrent power. It was known also that Congress had not exercised its power, and that the States had found it necessary to do so. In Pennsylvania especially, the Legislature had constantly found it necessary to exercise its power. And why should we, simply because the Constitution of the United State contained a provision on the subject, strike out that which was contained in the Constitution of our State; thus introducing a doubt at least, whether the Legislature had the power or not. In the Constitution of 1790, such a provision was found necessary; still he admitted that the manner in which that provision had been introduced, imposed a duty on the Legislature of Pennsylvania which had better be left unperformed. He agreed with the gentleman from Philadelphia, (Mr. Biddle) that the militia system of Pennsylvania, was fraught with evil, and that when the Legislature had been called on to put a stop to these trainings, they had turned to the provision of the Constitution of Pennsylvania, and had pointed to that as imperative. But it was not necessary, in order to get rid of this difficulty, to strike out the whole section. He should at a proper time move to amend the report of the committee, by introducing the words "may be by law" armed, &c.; thus leaving it optional with the Legislature to enact laws or not, as they might think right. He should, therefore, vote in favor of the motion of the gentleman from the county of Philadelphia, (Mr. Brown.)

Mr. Merrill, of Union, was of opinion that the question of conscientious scruples belonged properly to the ninth article, known as the Bill of Rights; and that the question of military trainings belonged to the article now before the committee. The two questions were distinct. The committee had been referred to the provision contained in the Constitution of the United States, as furnishing a reason why there should be no provision introduced into the Constitution of Pennsylvania in relation to the organization of the militia. It would be observed that the Constitution of the United States did not take the whole military power into its own care; it merely authorized Congress to direct *the manner* in which the militia should be organized, armed and disciplined; but left the actual training and appointment of the officers, two most important points, to the States themselves. Congress, however, had not exercised all the powers given to it. [Mr. M. then read the first section of the act of Congress, passed 8th May, 1792, from first volume Story's Laws of the United States, page 252, in support of his position.]

Mr. M. then continued:

Thus under the Constitution and laws of the United States, there was not any full provision for the existence of a Militia. Take every power which the laws of Congress had given, and there would be no militia at all. And the question then recurred, was a militia necessary? No man could doubt it. Those who would be oppressed by the invasion of the country were those who should defend it. A free country should never desire any higher defence than that of its own citizens—that of the people—call them what name we pleased, the Prætorian Guards, or the National Guards—still nothing less than the whole people defending their country, could make it sure that they would be defended. We ought then to cherish the militia system, and we could never remain free, as a

country, unless we did so. He acknowledged that the militia system, as it exists at present, was a farce. It was mimickry, and hardly afforded the advantage of any military education at all; but still it afforded a nucleus by which a proper education might be gained, by proper direction; it afforded a starting point. The militia of our State would have been in a much better condition at this time, if a feeling had not been excited so strongly in favor of volunteer corps; thus making the militia little better than a dead body. If the law of the State had taken a different course, if it had limited the training to a certain number of years, all would have joined the militia, and there would have been no need of volunteers. But unless we were hereafter to submit our defence to hirelings, it would be indispensably requisite that we should have an organized militia, ready for defence whenever occasion might require. I agree, however, with some gentlemen, continued Mr. M., who have expressed the opinion that it is not necessary that there should be trainings; that there should be no more such ridiculous, not solemn farces, as we have seen acted. An enrollment is all that the law should require, and less, it would be improper to require. The act of Congress of 1792, says, the militia of the several States shall be enrolled, leaving it optional with the States to train or not. But there must be an enrollment, and when the proper time comes, I shall prepare an amendment, providing that there shall be an enrollment of the militia of this State; thus inserting the constitutional provision, but leaving it in the power of the Legislature to say, how much further they will go. I would make the enrollment imperative, because by the law of Congress, and, I believe, by the Constitution of the United States, we were called upon to do so; and in time of peace an enrollment would be all that we should want. Whenever government comes to prepare for war, it might thus be furnished with the number of men who were ready to go forth to the public defence, and with the places at which they were to be found. If the names of all such were enrolled, a starting point might be secured to the government. But beyond this he did not now think it necessary to go; probably it might not be useful to go further at the present time. But ought we to leave the entire provision out of our fundamental law? Should the whole subject be left discretionary with the Legislature? He did not see the propriety of that course. He did not perceive, why, when the Convention was sitting here to revise those constitutional principles which might reign in the State government forever, they should pass over a subject of such importance. It was well known that this State had suffered at times for the want of a coersive power over the militia. The power had not been sufficient, and this was the reason why a resort had been had to volunteer corps. But a defence by volunteer corps, independent of the vast expenses which attended it, would, in carrying on a war, sweep away a whole generation, and convert the whole State into mourners. It was not proper then to depend on volunteers alone for defence in time of war. The Constitution of the State ought to provide for this. But when the question of conscientious scruples should come up, as it would do under the ninth article if the amendment was adopted, the subject would then be disconnected from the militia question, and the Convention would be left free to determine the question whether the services of those having conscientious scruples should be required; and if not, whether an equivalent for those services could with any propriety be exacted. It was his

intention hereafter to propose an amendment limiting the requirements of the provision to enrollment only, and leaving it discretionary with the Legislature to proceed further or not. This would place every man's rights on a fair basis, would put the country in a condition for defence, would meet the demands of the Constitution of the United States, and of the law of Congress, and would enable us to call forth an efficient force when necessary. He hoped the amendment would be adopted.

Mr. PORTER, of Northampton, said that the power to legislate on the subject of the militia, was one of those powers in which concurrent authority existed in the General, and in the State Government. Congress had this power expressly given to them by the Constitution of the United States. But until they did exercise it, and in respects in which they did not legislate in relation to it, it was proper and right that the States should have the power of acting. The authority therefore was retained to the States to legistate on this subject, with the single restriction common to all their legislation, that it should not conflict with the legislation of the General Government, on this subject. This doctrine would be found fully recognised in the case of Huston vs. Moore, and others, decided, first by our Supreme Court, (3d, Sergeant and Rawle, 196,) and afterwards by the Supreme Court of the United States. It is very proper, too, that this power should be exercised by the State Legislature. The system which the General Government might lay down for the whole Union, might not be so well adapted to the peculiar habits and feelings of every portion, as if the legislation on the subject had been enacted by their own more immediate Governments.

I am in favor of giving to the Legislature full power to enact such provisions on this subject, as they shall deem right, and only restricting them from infringing the Constitution and Laws of the Union. The existing constitutional provision, in practice, has been held unnecessarily to control legislation, in my judgment. Its language has been held both by the Executive and the Legislature, to be imperative whenever any attempt has been made to dispense with militia trainings of the ununiformed militia, and encourage, in lieu of it, a system of uniformed volunteers. The terms, "the freemen of this Commonwealth *shall* be armed and disciplined for its defence," have been held to make it obligatory to keep in force laws for the yearly mustering of the enrolled militia. We have thus far been burthened with a system onerous in the extreme, to at least a certain portion, if not all of our citizens, and which has not tended to produce that dicipline in the defenders of our soil, which the Constitution contemplated.—The Auditor General, in accordance with the request contained in a resolution which I had the honor to submit near the commencement of our labours, has given us a statement of the annual expenses of the militia of this Commonwealth, paid out of the State Treasury, from the adoption of the present Constitution, in 1790, until the month of November, 1836, a period of 46 years.

By that statement it appears that the amounts paid out of the Treasury during that entire period, were, - - - - -	$1,327,311 09
And that all the sums paid into the Treasury for militia and exempt fines during that period, amounted to -	200,162 40
Leaving the clear cost, exclusive of fines received, at	$1,127,148 69

Or something over $24,500, per annum, actually drawn from the State Treasury.

In this estimate it will be observed that nothing but the ordinary expenses in time of peace, were embraced. It did not take in any expenses connected with the time of war, and incident thereto, but merely the usual and ordinary expenses of the existing militia system. And to this large amount might be added not less than $150,000 per annum, in the loss of the labor of her citizens, whilst engaged in attending the militia musters, exclusive of all considerations connected with their effect upon public morals.

It might be well to inquire what corresponding benefits had the Commonwealth received from the existing system, as an equivalent for this outlay of money and time, and whether some better system could not be devised, either to prevent it, or, if it must occur, to obtain its value, in return, to the body politic. For this purpose I am willing to substitute, for the existing provision, that which is contained in the first part of the section reported by the committee, to-wit: that "the freemen of the Commonwealth shall be armed and disciplined for its defence, *when, and in such manner as the Legislature shall direct*;" thus giving the Legislature control over the subject, and bring to bear all the light which experience, that best of all teachers, may be able to shed upon it. Every branch of science is in a state of progression and improvement, that of Government as well as all others; and I do not feel that we could be justified in restraining the Legislature from availing itself of the advantages from this state and age of improvement. I beg that I may not be understood as undervaluing our militia. I use the term in its legitimate sense, as embracing both your volunteers and your enrolled militia, who are not uniformed; and I desire to cherish and improve it, as the only safe defence of our country in times of war and danger. I cheerfully adopt the sentiment that "a freeman's arm can best defend a freeman's home." Your militia-man carries with him into the camp a sense of his rights and duties as a citizen and a constituent part of the government of his country, which he is defending; and when properly disciplined, which is soon effected under proper officers, has the incentive of patriotism superadded to the other motives which act upon the regular soldiers, to produce subordination and exertion. Eutaw Springs, Kings Mountain and Bennington, in the war of the Revolution, and New Orleans, Plattsburg, Chippewa and Bridgewater, in the late war, with other engagements that could as easily be named, gave proof that they were capable of successful exertion in the battle's conflict, as the enemies of our country on those occasions could well attest. And whilst the names of the gallant captors of Andre were remembered, the incorruptible integrity of the *militia-men*, Paulding, Van Wert and Williams, will be the theme of admiration and imitation.

It, therefore, is desirable that the best means should be adopted to make this arm of the public defence as efficient as possible. Standing armies, at all times, but particularly in times of peace, are not in accordance with the genius of our institutions, and should never be resorted to in a republic, if they could be avoided. I have supposed that a system which would keep the whole body of your citizens, who are capable of bearing arms, enrolled, so as to be easily called on in times of exigency and danger, but would dispense with musterings, other than by volunteers, except when so called on; and which should hold out such inducements to the young

and active citizens of our country to uniform, and equip and discipline themselves, as would always keep a sufficient body of them ready for prompt and efficient action, would, perhaps, effectually accomplish this object; and that an expenditure of what the militia system now costs us in this way, would be much more judicious than its present application. A man seldom feels in the ranks as a soldier, unless in uniform with his comrades. But I do not profess to chalk out a system. I would leave that to the action of the Legislature, to adopt whatever they shall think best.

As it regards the second branch of this section, which it is purposed to strike out, I am in favor of the proposal to strike it out, for two reasons. 1st. I think it is not in the right place. It properly belongs to the Bill of Rights; and it is a fact that this is the only provision in the existing Constitution, which is found out of place, or calculated to mar the symmetry or system which so pre-eminently characterize it. If any such provision as this is necessary, it should be placed in that part of the Constitution which treats of the rights of conscience. These, as I have said, peculiarly belong to the Bill of Rights. 2d. I should be in favor of striking out this provision altogether. I regret that we have been driven into the discussion of the main question as to the rights of those conscientiously scrupulous of bearing arms, before we have legitimately arrived at the subject. And I believe that this provision may be disposed of without the decision of it. The memorial of the Society of Friends, which I had the honor to present, states, what is no doubt the fact—that this provision was intended by the framers of the Constitution for their benefit, whereas in fact it does not so operate, nor do they desire the exemption conferred upon the terms stated. They cannot conscientiously bear arms, considering it wrong so to do; and so believing, they can no more buy an exemption therefrom by paying an equivalent, than they can do the act itself. To retain that provision, holds out to the world that a privilege is given to them which is denied to other c tizens, thus subjecting them to invidious reflections, whilst in fact the provision is perfectly nugatory to such as are really conscientious. No man more sincerely respects the rights of conscience than I do; and when that subject is reached, I may trouble this body with my views upon it. But I think the adoption of this amendment does not affect that question one way or the other, and leaves all classes of our citizens upon a footing of equality: And if the Legislature, under the discretionary power which the remainder of the section gives them, shall dispense with the involuntary militia musters, those who are really conscientious will have gained in practice an important end in being called on to pay fines for not doing that which their consciences will not permit them to do. But this subject of conscientious scruples, as well as all other matters relating to the entire system, I must leave wholly and untrammelled, to the action of the Legislature, in whose hands I feel great confidence it would be safely exercised.

Mr. Cummin, of Juniata said, that he rose to give his views on the amendment which had been proposed by the gentleman from the county of Philadelphia, (Mr. Brown,) in reference to religious privileges. He had before him the memorial which had been presented from the society of friends, praying not only for exemption from military duty, but from the payment of all equivalent for it. It was his object to wipe away the stain which was thus cast on the bill of rights, which declared that we

were all equally free; that no distinction should be made; and that no religious privilege should be granted to any one over another. Neither conscience, nor the principles of conscience were well construed in this memorial. The memorialists set forth that all wars and fightings were anti christian; or, in their own words "that all wars and fightings are adverse to the peaceable principles taught by the holy promulgation of the christian religion." He did not doubt that this Convention would do its duty to the whole people of the State and to the nation; and it was his intention to submit a few arguments, which might not be very familiar to the members of the Convention, but which he thought would establish the obvious fallacy of the positions assumed by these memorialists.

It was laid down in the memorial, that all wars were anti-christian.—Now, he would ask what member of this Convention would desire to record his name as an infidel? And yet there were but two alternatives presented. That which was not christian was infidel; as in the olden times, there were only two denominations of people, and those who were not Jews were Gentiles. Thus there were but two classes in ancient days, and there were only two classes now.

The memorialists undertook to shew that all wars were anti-christian, and they claimed an exemption on several grounds. First, that they had a charter from William Penn. But William Penn, Mr. C. contended, made no such grant, and had no power to make it. The petitioners had misconstrued the rule of conscience. They could never say that they were interrupted in the full exercise of their consciences, until their church doors were invaded, or until they were prevented from enjoying those religious professions and practices which were the objects of their own peculiar choice. He did not know, nor did he believe that they had ever been interrupted in their mode of worship, or even called to account for any act, having reference to their peculiar faith. They claimed themselves to be the followers of the Prince of Peace, and therefore, they said that all wars were anti-christian. We all knew what was the character of the Prince of Peace; at least all of us knew, who had looked to his principles as the only rule and guide, not only in the things of time, but of eternity. They were some of them principles which the memorialist had overlooked. Abram kept 318 trained militia men, born in his own house, and led them on to battle. And, when he, (Mr. Cummin,) spoke of the grounds on which the memorialists based their claim, looking as they did, to the Prince of Peace as their great polar star, might he not refer to the acts of the government of the Prince of Peace, to ascertain what analogy there was between the two? He would not now touch upon the glory of the acts of the Prince of Peace, altho' he might do so hereafter. On examination, it would be found that those who had fought the battles of their country in all ages, were a people highly favored.—The first battle we read of in history, was that of the four kings who went up against Sodom and Gomorrah, and slew five kings. And then took with them the goods of Sodom and Gomorrah, and took Lot the nephew of Abram, who resided in Sodom, and took away all his goods. Abram was told of the capture of his nephew, mustered his 318 men; divided his army; followed the enemy for upwards of a hundred miles, near to Damascus; and subdued the four kings who had subdued five kings. Was this a stain upon the character of that great man, the father

of the faithful? Surely not; it was a great honor and glory. He saved their property, and Melchizedek went out to meet him, and there called him "Abram of the most high God—the possessor of Heaven and earth."—This was the first battle recorded, either in holy or profane history; and this went to establish the point, that those who fought the battles of their country were the eminent favorites of God; and indeed we had the authority of the King of Heaven and earth for saying so. Again: Look at the overthrow of Pharaoh and all his host in the midst of the Red sea! Was it not one of the greatest wonders ever known in the world? The Almighty directed his own peculiar people through that land of wilderness! and how soon were they called upon to muster their armies? I believe, said Mr. C., in one year and two months after their passage out of the land of Egypt; and in the first chapter of the book of Numbers, it will be found, that the word "war" is mentioned no less than sixteen times. The Almighty not only directed them to number the people to go forth to war, but Himself appointed the officers that should rule over them. What was the language of the Most High?

"Take ye the sum of all the congregation of the children of Israel, after their families, by the house of their fathers, with the number of their names, every male by their polls."

"From twenty years old and upwards, all that are able to go forth to war in Israel; thou and Aaron shall number them by their armies."

"And with you there shall be a man of every tribe; every one head of the house of his fathers."

How, said Mr. C., will this language compare with the prayer of these memorialists, or how can they reconcile their conduct to such acts as these?

In the second chapter of the same book, these tribes are all marshalled and stationed. And by whom? By this same Prince of Peace. HE was a leader and commander over the people. HE designated those who should be the commanders of the tribes; pointed out their stations; and had the whole twelve tribes marshalled in battle array. This was done under the immediate direction of the Great Prince of Peace, a mightier general than ever entered the field of battle. The tribes were attacked by the Amalekites; and the priests of the Lord led them on to battle. And Moses and Aaron and Herr, sat upon the mountains holding up the hands of Moses, for it so came to pass, that whilst Moses held up his hands, the children of Israel prevailed, and when he let down his hands, the Amalekites prevailed. And the children of Israel conquered the Amalekites, and put them to flight. And the Lord then spoke with Moses and said: "Write this for a memorial in a book, and rehearse it in the ears of Joshua; for I will utterly put out the remembrance of Amalek from under Heaven."

"And Moses built an altar, and called the name of it Jehovah—nissi."

"For he said, because the Lord hath sworn that the Lord will have war with Amalek, from generation to generation."

But, Mr. C. said, he would now leave this part, and advert for a moment to the conduct of Saul, who disobeyed the voice of the Lord in saving the life of the king of the Amalekites, and in refusing to destroy their sheep and their oxen. For this, Saul was dethroned. And in all those ages, we found that the Almighty said that his angels should go

forth before his own peculiar people, armed to destroy the heathen nations and to claim the land before them.

These points, Mr. C. said, were incontrovertible. No human being would attempt to deny that the Lord was their judge, their law giver, and the captain of their armies. He would now proceed to show what Joshua had done when he crossed over Jordan into Canaan, for the purpose of subduing the inhabitants of that country. Was any general ever able to do what he accomplished? Was Cæsar or Napoleon capable of beating down the walls of a great city like that of Jericho with the sound of a rams horn? It appeared that when Joshua was near Jericho, he went out to amuse himself, and he saw a man armed with a sword. He was somewhat taken by surprise, but he went up to him and said, "Art thou for us, or for our adversaries?" The man replied, "Nay; but as captain of the host of the Lord, am I now come." Who, he asked, would undertake to contradict these historical truths? And, how did they contrast with the prayer of the petitioners? Men who seemed to think it anti-christian to fight the battles of the Most High. These men went so far as to contend that they were not bound to protect themselves and their country. He (Mr. Cummin) would insist on the contrary, that they were. The fact was placed beyond all cavil and dispute, as he thought he had already shown. These people should be compelled to pay for their defence; and there was no good reason that could be urged why they should be excused. We all knew that after the Israelites were defeated at Ai, Joshua threw himself on the ground and kept his face fixed upon the ark of the Lord until the evening, and lamented bitterly that his God should have brought the enemies of the Israelites against them. The Lord tells Joshua to rise, and having done so, he tells him of the transgressions of the Israelites, and promises them pardon, and gives him directions as to how he shall divide his army and the manner in which he may take the city. Mr. C. would ask if that which the Almighty had done was anti-christian? Would those belonging to the denomination of Quakers say this? Why, then, was it, that a portion of the people of this State should ask to be exempted from the general duties of the whole community? Was ever such a thing known as a government making this distinction? Mary, the mother of our blessed Redeemer had to pay a tax, and she paid it without a murmur. What, he would inquire, was recorded in the book of Judges? Why, that Sisera, the captain of king Tobias' army, was delivered by the Lord into the hands of Jael, who slew him by nailing him to the ground when asleep. "So God," in the language of Scripture, "subdued on that day Jabin the king of Canaan before the children of Israel." Here, then, was another instance of the assistance of the Almighty being rendered to the people of Israel. What did gentlemen here say to the song of Deborah? In his opinion, it was a most delightful song. It was full of praises to the King of Israel, and of praises to those who fought the battles of the Lord. "Curse ye Meroz," said the angel of the Lord, "curse ye bitterly the inhabitants thereof; because they came not to the help of the Lord, to the help of the Lord against the mighty." The case of Samson, slaying the Philistines, (Mr. C. proceeded to remark,) was a memorable instance of God's interference for the protection of his servants. Samson was a man of war, for "the dead which he slew at his death, were more than they which he slew in his life." And, he had previously slain a thousand of his ene-

mies with the jaw bone of an ass. But, said the petitioners, "it is anti-christian to fight!" He thought, however, that they should be satisfied to be on an equal footing with their fellow citizens. They should be careful, too, how they cast reproaches upon men who would fight the battles of their country—who deemed it to be their duty to do so, and who did not think it anti-christian. He would refer to some other passages in the scriptures for the purpose of showing that God had sanctioned and aided his people in their battles against the wicked. In the 13th chapter of the second book of Chronicles, it would be found that Abijah, king of Judah, with his 400,000 men, fought and obtained a triumphant victory over king Jeroboam, killing 500,000 men of the 800,000, which he brought into the field of battle. The Lord was the captain of the army of the children of Judah, who thus prevailed, "because they relied upon the Lord God of their fathers." It was recorded also, of Asa, who succeeded to the throne of Judah, on the death of his father Abijah, that he most signally defeated the army of Zerah, the Ethiopian, because God was with him, and approved of the acts of his reign. Of king Hezekiah it is related in Holy Writ, that when Senacherib, the king of the Assyrians, was marching against him, the Lord sent an angel which destroyed 185,000 of his camp in one night. This, (Mr. C. remarked,) was another instance of the Almighty's interference in behalf of those who serve him. We found that the military achievments, concerning which, so much is said in the sacred volume, were usually preceded by a prayer, and praises sung to the Most High, and that victory was given to those who best deserved it. The Prince of Peace was humble and inoffensive, but was a terror to the wicked. He (Mr. Cummin,) maintained that fighting was not forbidden by the Scriptures—that is, fighting in a just cause—fighting in defence of a man's country.

Mr. C. said, he would turn to the New Testament for the purpose of showing what was the character of the fighting men there spoken of. He referred to the third chapter of Luke, 14th verse: "And the soldiers likewise demanded of John the Baptist, saying, and what shall we do? And he said unto them, do violence to no man, neither accuse any falsely; and be content with your wages."

How different, (continued Mr. C.) is the advice of John the Baptist, from that of the language held by the petitioners. They say that no soldier can be a christian—that all wars and fightings are anti-christian: consequently it follows, according to the Quaker doctrine, that they who fight the battles of their country, put themselves beyond the reach of Divine mercy.

He would say a word or two in regard to the centurion, who went to our Saviour and prayed him to restore his servant to health. He had the most implicit faith in the Redeemer, and knew the miraculous powers which he possessed. The centurion, after asking that his servant should be healed, used this language: "I also am a man set under authority, having under me soldiers, and I say unto one, go, and he goeth; and to another, come, and he cometh; and to my servant, do this, and he doeth it." The sick man, (Mr. C. said,) was immediately made whole, was completely cured. How different was the conduct of the centurion as contrasted with that of the petitioners. He was kind, gentle and confiding in his manner, and uttered not a syllable calculated to wound the

feelings of the most sensitive. He (Mr. C.) wished he could say as much in reference to the character of the memorial from the society of Friends.

He next related the particulars as connected with the Centurion's having sent for Peter, the apostle, in order to show that neither Christ nor his apostle, ever gave the slightest rebuke to any man, because he happened to be a soldier.

Having said a great deal in relation to the military character, he would now throw out a few observations as to the duty which every citizen owes to his government. In all countries, no distinction is made between men in regard to contributions for the support of the government. The memorial, however, which had been presented from the friends, contained a strong argument against calling upon them for their aid in defending the country when necessity requires. They contend that it is anti-christian to fight, and are themselves unwilling to do so, but do not object to pay an equivalent. Now, he would ask gentlemen here, what was the difference, in a moral point of view, between a man fighting himself and getting another to fight for him? For his own part, he must declare that he could not perceive any distinction whatsoever. The gentleman (Mr. Cope,) had gone into a detailed account of the enormous sums which they had paid for taxes, &c. He had shown that the Quakers had paid three times the amount of other denominations, that they had been distrained for it. He said that they supported their own poor. Well, (remarked Mr. C.) what have we to do with that? They have a right to pay their share towards the support of the poor of all denominations.—Some of the Friends estimated their property at $300,000, and some at 200,000. This was a matter entirely under their own control. Why should they, then, refuse to serve as militia men, or to pay towards its support? They say they will not pay nor they will not fight, but they have no objection, when the hour of necessity shall arrive, to pay others for shooting down their fellow men. The gentleman who presented the memorial of the society of friends, considered that there was no moral difference between paying a man for shooting another, and doing the act yourself: and on this ground he desired to be exempted from any pecuniary or personal obligation.

Are not the Quakers on an equal footing with the rest of the community in regard to rights and privileges? Certainly they are, and yet they refuse to do those things, which, according to the bill of rights, they ought to do, to be entitled to partake of the rights and privileges guaranteed by that instrument. He would relate an anecdote by way of parallel. Gen. Jackson understood how to manage matters of this sort. Just before the siege of New Orleans, when the General was putting that city in a state of defence, he seized some cotton bags; and a Frenchman came to look for his cotton, and he remarked to the General "you have got my cotton bags—that is my cotton." "Well then," replied the General, "if that is the case, you are just the man to fight for it, and I will put you in my band." So, therefore, (said Mr, Cummin's) ought these Quakers to fight for their property—ought to be made to defend it. If those who were denounced in this memorial had acted upon the principles laid down by the society of Friends during the revolution, and had refused to fight the battles of their country, we should have been slaves to Great Britain to this

day. During the revolutionary war, there were more traitors by ten to one, of Americans than of foreigners. He asked if there was a man present who had a relative in that war, who would support the prayer of the petitioners. He contended (and he admitted that he was using strong language) that any man who would go for granting the prayer of the petitioners, wrote himself down an infidel. If they did not comply with those requisitions upon which the bill of rights was predicated, and which entitled them to all the rights and privileges therein set forth, the members of the society of Friends certainly ought to give up their seats in this Hall. It might be considered bold in him to speak in the presence of those who were interested in this matter, but he could not help expressing his sincere hope that when the question should come up for the final decision of this body, that the Friends would not vote for it. And, if they should set up that they are the followers of the Prince of the Peace, he (Mr. C.) would undertake to show that they are not. He maintained that every one was in duty bound to support the government under which he lived, and he referred to the conduct of Christ as illustrative of what was the duty of all good citizens. It was recorded in the Gospel of St. Luke that spies were sent out by the chief priests and scribes to watch Christ, and they addressed him in this language: "Master, we know that thou sayest and teachest rightly, neither exceptest thou the person of any, but teachest the way of God truly. Is it lawful for us to give tribute unto Cæsar or no? But, he perceived their craftiness, and said unto them why tempt ye me? Shew me a penny. Whose image and subscription hath it? They answered and said, Cæsar's. And he said unto them, render, therefore, unto Cæsar the things which be Cæsar's, and unto God the things which be God's." No man (said Mr. Cummin) can contradict the truth of this. It was, then, as clear as the sun that shines at noonday, that every man being under a government has a right to contribute to its support. This was a universal understanding throughout the world.

He would refer to another portion of Scripture. Mr. C. then read the following verse:

"Let every soul be subject to the higher power, for there is no other power but of God, the persons that be are ordained of God. Whosoever resisteth power, resisteth the ordinance of God. And they that resist, shall receive to themselves damation."

Mr. C. asked what the petitioners would think of this authority. It was certainly strong and emphatic language, but it was, nevertheless, the language of Divine inspiration, introduced by the apostle. It was not an expression of his own private judgment, but that of the judgment of God, and his rules and his laws must be obeyed. The petitioners seemed not to regard this language, and they complained that their society in Philadelphia had had to pay $300,000 taxes. Now, this was their own fault, and occasioned by their rebellion to the government. And, so they admitted ;then why not pay their share of taxes as other portions of the community do?

Mr. C. said that this was a denunciation against those who refused to contribute towards the support of the government, and every man who heard him knew that he spoke the truth. "For rulers are not a terror to good works, but to the evil. Will thou then not be afraid of the power?

Do that which is good, and thou shalt have praise of the same. For he is the minister of God to thee for good. But, if thou do that which is evil, be afraid; for he beareth not the sword in vain; for he is the minister of God, a revenger to *execute* wrath upon him that doeth evil. Wherefore *ye* must needs be subject, not only for wrath, but also for conscience sake. For this cause pay ye tribute also; for they are God's ministers, attending continually upon this very thing."

As he had stated in the outset, were men ever interrupted from worshipping God according to the dictates of their own consciences, and where there were none to make them afraid? For, as the Scripture says in reference to obeying the rulers of the land: "Render, therefore, to all their dues; tribute to whom tribute *is due*; custom to whom custom; fear to whom fear; honor to whom honor."

He (Mr. C.) did not pretend to be an expounder of Scripture, yet he conceived there was nothing plainer to be deduced from that book than that it was the duty of every man to contribute towards the support of his government. Why, then, he would ask, did the society of Friends suffer themselves to be levied on? Why did they not pay their taxes as other good citizens did? If they had done this, they would not have had their property seized, and about which they complained. If they were the friends of peace, as they professed themselves to be, why did they not comply with the requisitions of the land? Why did they not do those acts which would prove them to be the friends of peace? Conscience is a principle of the mind, a principle of the soul. It is God's vicegerent in the heart. It approves what is right, and dis-approves what is wrong.

Mr. C. contended that according to the language of the sixth verse of the 13th chapter of Romans, which he had already read—men were bound to support the government which protects them, even though it be a Heathen one, and ought to pray for its peace and prosperity, so long as they shall be allowed to exercise their rights and privileges like the rest of the community.

He (Mr. C.) asked if the petitioners had complied with any one of these requirements. Those who had sat in this Hall to form a Constitution for generations yet to come, and had not fulfilled the law, and held to the doctrine of equality, offered an insult to those who had complied with the requisitions by all, imposed upon them. It was quite evident that no human being could be exempted. Supposing that other citizens were to follow the example of the Friends, and refuse to contribute to the defence of the country, how could it be protected? And, what would be the consequence? Why, the enemy would overrun the country, annihilate the government, and murder men, women and children. Now, under such a state of circumstances, he would ask if the petitioners would contend that they, in common with every other citizen were not imperatively called upon by laws divine as well as human, to defend their country? He maintained that the Bible abounded in instances, many of which he had already cited, in which the Lord had encouraged and aided the people of one nation in defending themselves against the attacks of their enemies. He insisted that ever since there was any organized society in the world—taxes had always been paid for the support of government, and he who did not know that fact had read the Scriptures to little purpose. Why should these petitioners not submit to the law, do as

others have done and still do, and not set themselves above their neighbors? They should conform to a law by which others were governed, and in which the whole community was equally interested, for it was entirely fruitless to attempt to escape the payment of the militia tax.

Mr. Biddle said he had been told by a friend, for whom he entertained the highest respect, that he had prematurely introduced into the discussion a very exciting topic. But he could not agree to the justice of the remark. The question was not merely whether we should exempt from militia duty those who conscientiously scruple to bear arms, but whether we shall put in the Constitution any provision whatever upon the subject of the militia. The question is not whether we shall rely upon the militia for defence, but whether we shall insert in the Constitution a provision requiring the Legislature to act on the subject. He had before shown that the whole subject was delegated to the Congress of the United States, by the Constitution. The Constitution provides that Congress shall have power to provide for organizing, arming, and disciplining the militia; and it was therefore, as he contended, unnecessary to insert any thing on the subject in the Constitution of the State. The question was not whether we should rely, which God forbid, upon standing armies, supported in time of peace, or upon a militia. It was not proposed to restrain the jurisdiction of the Legislature over the matter, at any time when the exigencies of the State required it; they had ample power to act upon the subject. It was not necessary to enter into the question whether the States have a concurrent power with the United States on this subject, for it was not disputed by any one. Why then was it necessary to make any provision whatever on the subject? Why retain this feature in our fundamental law? His objection to it was, that it was a subject which did not, at all times, require legislative action. At times we had better not have any militia; and, when it was necessary, the power to create them could be invoked. It was said that a well regulated militia was necessary for foreign defence; but the contingency which would render them necessary for defence against foreign aggression was very remote; and when it should arrive—when there should be any danger of invasion—every citizen of the Commonwealth would be ready and forward to repel it. There would never, he trusted, be any occasion to invoke the exercise of this power for that purpose. But it had been intimated that it might be necessary to call out the militia for another purpose—for the defence of the State from the aggressions of our sister States. Sir, I trust, said Mr. B., I believe that the day is far remote when the citizen soldiers of the several States will point their bayonets at each other. He would never legislate in anticipation of a contingency so calamitous. The next contingency suggested was civil commotion; and, in this case, he would greatly prefer reliance on civil aid. In every emergency of this kind he believed the civil magistrates would have sufficient power in civil officers, to restore the public tranquility.

Then neither of these considerations can render it necessary to engraft on the Constitution of this State, as a State and not as a part of the United States, a provision for a permanent militia system. It was not to be said, therefore, that he had brought before this body an exciting topic of discussion. He had witnessed no excitement. Every one was cool, reflecting, and dispassionate, and prepared, like himself, to discuss

the question in a cool and temperate manner. He could differ in opinion from those around him, without, in any way, feeling excitement at their opposition to his views. In this country, where every man sits in peace, under his own vine and fig tree, should he be told, when he offered to extend a panoply of protection over those whose moral influence had been so beneficial, and who had so well discharged all their civil duties, that he had introduced a topic calculated to excite passion? He would prefer to place the subject out of the reach of the Convention. If we were to have a militia, there would then be great weight in the objection to making any distinction, in the burden, between different classes of the community. But he believed it to be wholly unnecessary to have any militia, and he would, therefore, leave out the provision as useless. The power given to the Congress of the United States over the subject, was ample for the protection of the country from foreign aggression, or insurrection; and though he loved his native State, he also loved the Union. He believed that whenever the occasion required it, the action of the Union through the Federal Government, would be amply sufficient for the protection of the State, or the United States, against any foreign aggression. This Convention, he said, would get rid of a question of a very difficult and delicate character, by avoiding any action upon this subject. Upon consideration, he did not believe the amendment of the gentleman from the county would produce any harm, and he should therefore vote for it, and then vote against the section. He was well aware that there were many gentlemen here who were disposed to provide for the special exemption of the members of the society of Friends from performing military service, on paying an equivalent for it; but though he had the highest respect for that worthy and benevolent portion of our fellow citizens, yet he was obliged to differ from gentlemen as to the propriety of the exemption proposed.

Mr. JENKS said, the question was on the motion of the gentleman from the county to strike out the words "those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service." He was in favor of striking out this clause,—not because he objected to its principle, but because the proper place for the provision was in the Bill of Rights. If it was stricken out, he would, hereafter, on a proper occasion, avail himself of the privilege of giving his sentiments on this interesting subject.

Mr. FULLER wished, he said, to understand what was the intention of the motion to strike out; and he wished it to be understood by the Committee. Was it the object to pass over this provision altogether, or merely to defer it until the Bill of Rights was taken up? In his opinion, if such a provision was to be made at all, this was the proper place for it, and he wished the question to be disposed of here. The question was whether an exception should be made in favor of any class of our citizens. He was opposed to any such distinction; preferences and distinctions, in a republican government, were always dangerous. The burdens of society ought to fall upon all alike. He was as friendly as any one could be to the sect whom it was proposed to exempt from the burdens of militia duty, but he could not agree to allow them any distinction or privilege, which would go to excite jealousies, and create an inequality among citizens. He had no objection to placing all upon an equal footing, and leaving the whole matter to be considered by the Legislature hereafter. The most proper

disposition that could be made of the subject would be, he believed, to leave it to legislative discretion; and, as he wished to see the subject disposed of finally, he would make one or two remarks on the question of conferring exclusive privileges upon any class, or of making any distinction in the imposition of public burdens or taxes. With respect to exempting the members of the society of Friends from bearing arms, it would, he thought, have a very injurious tendency. It might encourage other sects to start up and claim the same privilege. It was an oppressive burden upon all. It was found oppressive, no doubt, during the revolutionary war to bear arms. Men, in poor circumstances, were not able to support their families, without attending to their daily labor, nor able to provide a substitute. This was often the case with many; but he could see no reason why opulent men should be exempted from bearing arms, or providing a substitute. There could be no propriety in it. If they were scrupulous as to bearing arms, they must be equally so as to paying for those who do the service. It was just as wrong to pay one for killing a man as to kill him one's self. There was also just as much reason for exempting these men from all contributions to the support of the government, and the defence of the country, from which they enjoyed equal benefits with others, as for exempting them from this particular burden. How could they claim exemption from the payment of their share towards the general tax? If they were sincere in their professions, and he could not doubt it,—though so unreasonable were they that he could scarcely believe it, notwithstanding the number of men of probity whom he knew to be among them,—it was still a matter of predominant importance that the national defence should be provided for, and no set of men, however sincere, could set up a claim to be exempt from rendering their aid in the defence of the country. If the same provisions were to be made here as in the Constitution of 1790, let them be agreed to here, or thrown out as a whole. There was no difference between the proposition now made, and the provision of the Constitution of 1790, except that the present Constitution made it imperative on the Legislature to continue the militia training, in consequence of which every effort to abolish the militia trainings, had proved abortive. The report of the committee had left it discretionary with the Legislature to continue them or not. With respect to volunteer trainings, he had some difficulty, some doubts about inserting the word "when." He was disposed to believe that the volunteer trainings would be injured by abolishing the militia trainings. There would be nothing to stimulate men to raise volunteer corps, if militia trainings should be abolished. The militia trainings had become unpopular, because they were disorderly, and the discipline and uniform of the volunteers appeared to great advantage in comparison. Many, therefore, left the militia for the volunteers. But were it not for the militia, emulation would not exist to the same extent in the volunteer corps. To keep up that corps, it was necessary that the militia should be in sight with their cornstalks and hoes. Wherefore, he was of opinion that it would be full as proper to leave the matter as it was.

Mr. CHANDLER, of the city, said he had been much edified by the remarks of the member from Juniata, (Mr. Cummin,) and if he could have heard the whole, he should probably have been more gratified. He had hoped that this subject would be so regulated as to render it unnecessary to impose any burden on the society of Friends. The cornstalk

trainings, of which we had heard, were no longer considered essential to the independence of the Commonwealth; and though there were many who could show the laurels and the scars acquired in that honorable service, and who bore titles in memorial of it, yet he knew few, in a large circle of acquaintances, who were not ashamed to be addressed by their militia title. He was a great advocate for the volunteer service; for, like that of the fire department, it was performed without compensation. He did not concur with the gentleman from Fayette in the supposition that the militia trainings were the source of the emulation witnessed in the volunteer corps. They required no stimulus to the duty, any more than the volunteer fireman did to the performance of his duties. In regard to the exemption of the Friends from military duty, if any class of citizens were entitled to such a privilege, they were. A military government was not one of their choice. If it had been made so, it was by those who had come into the State, since they acquired it, not by arms, but fair purchase from the original lords of the soil. They may truly say to those who call upon them to bear arms,—we need no defence; we wish none; we made none of these laws; and you that come since our fathers came, have no right to coerce us to obey them, whatever you may do among yourselves. But he, (Mr. C.) did not think it necessary to make any distinction. The whole system of militia trainings was universally unpopular, and it was productive of immoral habits, which lawgivers should always be careful to check and discourage. The gentleman from Juniata had called all infidels who did not agree with him in his conclusions. Though he was himself always ready to bear arms whenever he was called upon, he did not so understand the Gospel of Peace, that he should not be at peace with all mankind. He was desirous of taking advantage of the present juncture to encourage volunteer trainings, if any were necessary, as he thought they were. It was said that the only means to keep up emulation among the volunteers, was to bring out the militia. But this was not the case. In many places the volunteers would refuse to appear in company with the corn stalks. We had been told that the militia system cost the Commonwealth of Pennsylvania one million of dollars annually. With one half of this expense, an efficient and well disciplined volunteer corps could be supported, and a vast source of idleness and immorality shut up. We should then send the people home, on training days, sober and quiet, instead of disorderly and drunken; and we should have an efficient volunteer force, without the expenditure of a dollar of the public treasure, or any iniquitous fines. One half then of our present expenditures in supporting the militia system, would put us in an attitude for war, and enable us to maintain that attitude. Every thing that we wish, would thus be secured, and the feelings of Pennsylvanians would not be insulted, as they now are, every time they passed by a tavern where there was an assembly for a militia muster.

Mr. Martin rose, he said, to correct a statement made by the gentleman from Fayette, (Mr. Fuller,) whom he understood to say that the Friends asked to be exempt from the payment of taxes. If the gentleman had paid a little closer attention to the language of the memorial of the Friends, he would have known that there was never an instance in which they asked to be exempted from the payment of their full share towards the expenses of the government. They never asked the government to go to any greater extent than to exonerate them from the pay-

ment of militia fines. They required exemption from personal service in the militia, and from the payment of an equivalent for that service. They never asked us to go to any greater extent. As to the gentleman from Juniata, who had carried us through half of the history of Jewish wars, to prove that war was acceptable to the Almighty; he was himself exempt from the service in the militia into which he seemed to be so anxious to press others. Notwithstanding the gentleman's earnest defence of war, he had not, he believed, fought any battles, and probably never would. But he would pass that over; he had risen only to bring to the view of the committee the real question, and what was asked by the Friends. He hoped gentlemen would not branch out upon what was not asked.

Mr. FULLER: The gentleman from the county thinks that I have fallen into an error in intimating that more was claimed by the society of Friends, than exemption from paying an equivalent for personal service. But I inferred this from their principles, which, if carried out in sincerity, would lead to that absurdity. It follows, as a matter of course, that on the same principles on which they claim exemption for the militia fines, they may claim a like exemption from the payment of any general tax which goes into the public treasury, for the common defence. Why might they not as well resist the payment of a tax which goes to the support of the army or navy of the United States? If they have any conscientiously scruples at all upon the subject, they must be carried out, or they are good for nothing. What difference is there, in principle, between killing a fellow man in war, and paying another man to kill him? And, again, do not the Friends pay one man to kill another, when they pay their share of the general tax towards the support of the government, and the means of national defence?

Mr. BROWN, of Philadelphia county, said that the amendment he had proposed was not so objectionable as many gentlemen supposed. The proposition was a plain and simple one. The clause proposed to be stricken out was introduced in the beginning, to relieve a worthy class of citizens who were conscientiously scrupulous about bearing arms, but what was the relief it proposed? Why it proposed that those who were conscientiously scrupulous about bearing arms should pay an equivalent in money for such personal service. It was found, however, that this was as objectionable as the other. If they were conscientious in relation to the bearing of arms, they were equally so in relation to the payment of money for personal services. It was, therefore, no relief at all. If it was intended to afford this class of citizens relief, afford that relief which was proper and expedient but not hold out to them this provision as a measure of relief, when it was no relief. The clause was objectionable on this ground, but he was opposed to it on other grounds. He was opposed to it because it created distinctions in the different classes in this Commonwealth, and distinctions which were calculated to create in the minds of the people, dissatisfaction with their form of Government. He could see no reason for making these distinctions in our fundamental law. If it was necessary that any persons should be exempted from the performance of military duty or the payment of an equivalent therefor, let the case be provided for by the Legislature; leave the whole matter open to Legislation, and not here interfere with it. He believed there were persons now

in the Commonwealth who were exempted from the performance of military duty—ministers of the gospel were exempted, and he was informed that school directors were also exempted. He saw no reason why any of these distinctions should be made in the Constitution. Let us leave the whole matter open to legislation, and let us place this class of citizens on the same footing with all other citizens of the Commonwealth, unless some provision can be adopted which will actually afford them relief without creating any distinctions in society.—He had no idea of placing one class of persons on a more favorable footing than another. He wished the clause stricken out for the present, as he could not consent to place one class of citizens on higher ground than another, unless the good of the community required it. He also opposed the retaining of this clause in the instrument, because it opens the door to fraud, which should always be guarded against. There may be times when the personal services of every man would be required. By this clause, however, the services of the poor man would be the only ones you could obtain. The rich may obtain substitutes by the agency of money, but the poor man must peril his life in defence of his country; his rights, and the rights also of those who will not themselves shoulder their muskets to defend them. The wealthy may decline rendering personal service to their country for various reasons—because of their concientious scruples, because of the comfort they can enjoy at home, or because they can make more in the transactions of their business at home than will pay the services of a person as a substitute for them. He can remain at home, secure from danger, and, at the same time, be adding to his worldly wealth, while the poor man is compelled to leave his family and his fire side, and peril his life, and waste his substance, in defence of those who are in the enjoyment of comfort and quiet at home. He wished every man to do his duty, from the richest to the poorest, and he wished every man to be on an equal footing. This clause had been introduced into the Constitution for a good purpose, but time and experience had shown it to be entirely unfitted to the object intended to be effected by it. It could do no good in time of peace, and, in time of war, men would be shielding themselves behind it to the great injury of the community at large, who would be the sufferers by it. He trusted, therefore, for these reasons, that the clause might be stricken out.

Mr. DARLINGTON said that this subject had been treated as if it was a matter peculiarly asked for by the society of friends, as an exclusive benefit to themselves and themselves alone. This was the light in which it appeared to have been received and treated by the gentleman from Fayette, (Mr. Fuller,) and the gentleman form Juniata, (Mr. Cummin.) Now by the memorial first presented to this Convention, it would be seen that they placed the prayer upon the broad basis of human rights: they asked nothing peculiar for themselves, but for every individual in the community who had conscientious scruples about bearing arms for the purpose of destroying his fellow man. This was what they asked, and nothing more. The second memorial which was presented by the gentleman from the city of Philadelphia, (Mr. Cope,) and which was brought to this place by a delegation from the society of friends, he held in his hand, and it contained the following language: "we therefore hope you will make such provision for the religious scruples of ten-

der consciences as shall be evident, it is merely a concession to christian principle, and not limited to any classes or persons."

Now, if both of these memorials are examined it will be found that nothing exclusive was asked for by the society of friends. That society, it is true, is the only one which has asked this at the hands of the Convention; but, if it is adopted, it will extend to other individuals and classes of the community, equally respectable with that society. It will apply to a highly respectable denomination, who were known by the name of Menonists. They too hold it as a part of their creed, that it is improper to bear arms; and it may be that there are other societies who hold these peculiar tenets and principles. There are many individuals too who do not belong to any society, but who hold to the same principles. With regard to the argument of the gentleman from Juniata, (Mr. Cummin,) he had only to say that it would be more likely to produce an impression unfavorable to religion in the minds of sceptics than otherwise. He had been brought up and taught in the doctrines of the christian religion, and he always understood it to be the tenets of the christian church to produce peace on earth, and good will among men. He had no desire to go into a scriptural argument to prove this, as he knew himself to be incompetent to do the subject that justice which ought to be done to it. It was sufficient for his purpose to know that this was the belief of the society of friends, and of other religious denominations and individuals. It was known that these persons were conscientious, and if it was known to be a part of their creed, let us enquire whether we should not respect it. Let us look for a moment into the Constitution of 1789, which was adopted at a time when perhaps there was more of the military spirit infused into the minds of men, than at any other time since the foundation of this Government. The framers of that instrument were many of them fresh from the fields of the revolution, and all Europe was convulsed with the exploits of armies. Notwithstanding, however, that the people of that day were infected with a military spirit, we see them adoping the principle in the Constitution, that government has no power nor right to control the consciences of men. Now, if that people at that time regarded the right of conscience by a constitutional provision, how much more ought we now to regard it? Shall we now in times of peace, when almost the whole world are engaged in peaceful occupations, say that we will not respect the rights of conscience? Shall we say that because the minority differs from the majority, that they cannot be permitted to enjoy the freedom of conscience? Shall we be told that the minority, and the conscientious minority, are less entitled to the regard of the majority than when the present Constitution was adopted. If the right of conscience was then worth protection, it is equally so now. If you look into the legislation of all countries, you will find conscientious scruples regarded. You will find in England and America religious scruples tolerated, and provisions made to meet the case. In the courts of justice, where the lives and the property of our citizens depend upon the evidence there given, conscientious scruples, in relation to taking oaths are regarded, they are exempted from the obligation of the oath, and are permitted to give testimony in the manner most congenial to their own consciences. Our laws all go more or less to respect the rights of conscience, and why introduce provisions here at

this day denying of a respectable class of citizens the free exercise of the right of conscience. He thought an examination of the report of the committee ought to convince every one that the amendment of the gentleman from the county of Philadelphia ought to prevail. The section reads, "the freemen of this Commonwealth shall be armed, organized and disciplined for its defence, when and in such manner as the Legislature may hereafter by law direct." Now, he thought this was all that need be required, and all that was necessary. It was leaving to the Legislature the power of providing the manner of carrying out the details as they saw fit. This was giving it the power to say whether the militia should be compelled to parade and exercise in time of peace. He apprehended that there would be no objection to the first branch of the proposition, to abolish or keep up the militia system as it saw fit. The latter clause however, he hoped, would not be adopted. When we come to the bill of rights, where it is proper to insert provisions for the protection of the rights of the people, there this matter may be provided for. For these reasons he hoped the motion to strike out might prevail.

On motion of Mr. Carey, the committee then rose, reported progress and obtained leave to sit again to-morrow, when the Convention adjourned.

SATURDAY, October 21.

Mr. Sturdevant, elected in the place of Mr. Swetland, (resigned) as a delegate from the county of Luzerne, appeared, and took his seat.

Mr. Cope from the committee on accounts, made a report, in the form of a resolution, which was read twice, considered and adopted.

SIXTH ARTICLE.

The Convention resolved itself into a committee of the whole, Mr. Chambers in the chair, for the purpose of considering the report of the committee on the sixth article of the Constitution.

The question pending being on the motion of Mr. Brown, of Philadelphia, to amend the 14th section of the report, by striking out all after the word "direct," in the third line, being the words following, viz: "Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service."

Mr. Jenks said the second section of the sixth article of the Constitution of Pennsylvania, requires "that the freemen of this Commonwealth shall be armed and disciplined for its defence." It has been a subject of general regret, that this Constitutional provision is imperative. The experience of forty-seven years, has most satisfactorily shown, that mili-

tia trainings in times of peace, are not productive of beneficial results. That they have failed to establish that discipline and subordination which is deemed so essential a qualification to soldiers in actual service. There naturally exists in the minds of American citizens, an aversion to coercion and military restraint in times of peace, when the necessity for military discipline is too distant to be realized. He would not be understood as undervaluing the services of the militia; he had been a militia man himself in peace and war; he was not ignorant of the splendid achievments of our militia in the late and revolutionary wars; yet these brilliant victories had their origin in that burst of patriotism created by the occasion. They were not the effect of any discipline acquired in our ordinary militia trainings. It was a general remark made by our officers in active service, and experience fully confirmed its truth, that the old militia men brought with them a spirit of insubordination, contracted at militia trainings, which was often difficult to correct and subdue. This is natural. Freemen will not, in times of peace, endure military restraints; and his limited experience had satisfied him that our annual trainings would not fit men for practical service. In times of danger when patriotism is ripe and active, a few days discipline will better prepare men for service, than years of militia training. Love of country and approaching danger, induce our citizens to cheerfully submit to subordination and military restraint. Freemen's arms will successfully resist all attacks upon freemen's rights, come from whatever quarter they may. If then those advantages had not been derived trom militia trainings, which were anticipated, let us give to the Legislature a discretionary power to dispense with militia trainings, or an equivalent therefor in time of peace. The annual trainings to the people of this State, had been most onerous, attended with an expense, which the Legislature, if untrammeled by the Constitution, are not justifiable in imposing upon the people of this Commonwealth. Let us examine this item of expense. By the report of the Adjutant General to the Legislature in 1836, he estimates the number of militia in the Commonwealth at 212,610 men. Those militia men are called on to train twice a year, or pay an eqeivalent therefor. Estimating their loss of labour and expense they are subjected to, at one dollar a day per man, makes the annual amount of expense and loss of labour to the people of the State, $425,220. In addition to this, there is an annual draft for militia expenses upon the State Treasury, of more then $20,000; last year it was upwards of $29,000.

By the report of the Auditor General to this Convention, it appears that the amount drawn from the State Treasury for the support of the militia, other than that received for their support in time of war, from 1790 to November 1836, is $722,157 15

The amount of militia fines imposed during the same period is,	$587,359 33	
Deduct exonerations,	163,712 98	
Leaves ————		425,446 35
Amount of exempt fines for the same period,	$292,223 36	
Deduct exonerations,	112,715 78	
Leaves ————		179,507 50

Making the whole amount of militia expenses accruing since the adoption of the present Constitution, $1,127,148 69, exclusive of the expenses incurred during the late war, and exclusive of the loss of useful labor to the

Commonwealth, and the expenses attendant upon milita trainings; and much of this enormous amount comes from the poor whose labour is their all, and the sole means of providing their families with bread.

But this is not all. There is a view of this subject to be taken, of much more importance than the mere matter of dollars and cents. Militia trainings are found to be the prolific source of vice, and the permanency of the Republic depends upon the virtue of its citizens. All history tells us that no Commonwealth can exist when the morals of the people are corrupt. It is then the sacred duty of legislators, by closing, as far as practicable, all avenues to vice, and to give to our institutions that permanency to which their excellency entitles them. If then there is no necessity for militia trainings in times of peace; if they may be dispensed with advantageously to the people, or if they have failed to secure discipline and organization, the objects of their institution, then it is desirable to give to the Legislature a discretionary power to dispense with them in times of peace. It would annually save much valuable labour and many thousand dollars to the Commonwealth. The poor man would be relieved from the burthen of militia trainings which now affect him as a heavy and most unequal tax. And those who are conscientiously scrupulous to bear arms, would not be harrassed by those violations upon their consciences which the collection of militia fines inflicts. The occasion sir, ought to be pressing indeed which could justify an interference with the rights of conscience. Those rights which were reserved to the citizens by William Penn, the founder of the Colony of Pennsylvania, recognized by the Constitution of 1779, and incorporated in the bill of rights in the present Constitution. If sir, by the continuance of this provision in our Constitution, a most respectable body of christians be oppressed, it would be most despotic; remove the Constitutional trammel from the Legislature, and public sentiment would constrain them in times of peace to dispense with militia trainings.

Mr. Fuller moved to amend, by striking out the whole of the section, after the words "section 14," and inserting in lieu thereof, the words following, viz: "The freemen of this Commonwealth shall be enrolled and organized, to be disciplined for its defence as may be provided by law."

The chair decided the motion to be out of order, as it did not propose any amendment to the amendment of the gentleman from Philadelphia.

Mr. Fuller suggested that as it had been read, the amendment ought to be accepted by the gentleman from Philadelphia, as a modification of his proposition. [Mr. Brown here expressed dissent.] As his suggestion was not accepted, he hoped that the amendment of the gentleman from Philadelphia, would not be agreed to.

Mr. Brown suggested that the gentleman could offer the proposition as a substitute, for so much of the section as would remain, when his amendment was agreed to.

Mr. Fuller signified his intention to do so, and asked the gentleman to withdraw his motion to enable him to substitute his proposition. He would make it obligatory on the Legislature to enrol and organize the militia, leaving it optional with that body to discipline them or not. This he

believed would meet the views of a majority of the committee. The Constitution as reported read thus: "The freemen of this Commonwealth shall be armed, organized and disciplined, when and in such manner, as the Legislature may hereafter by law direct." The word "when" was the point on which the whole question turned. He had doubts whether the language of the Constitution was sufficiently explicit. It might become a subject of debate with the Legislature, whether they had the authority to discipline the militia. His object he explained to be, in the first place, to make it obligatory on the Legislature to have the militia enrolled and organized. He would then leave it to the Legislature to regulate the discipline, as they might think best. The Legislature would, at all times be governed by the will of the people, and therefore this discretion might be safely left in their hands. He thought this would meet the object of the gentleman from the county of Philadelphia. The obligation to enrol and organize, and the power of the Legislature to discipline the militia, he could never give up. Enrolment was merely for the purpose of gaining the knowledge of the number of citizens capable of bearing arms, and there was a distinction between enrolling and organizing. He desired, before he resumed his seat, to throw out an idea concerning the society of Friends. The ground of complaint made by this society, was that the Legislature was tied up by the Constitution, and could not act to relieve them from the penalty of declining personal service, if disposed to do so. The amendment would release the Legislature from this fetter, and leave them at liberty to grant such privileges as they might think fit. It would therefore answer every purpose that the society of Friends wish, by placing them in the hands of the Legislature. If he could gain his object by the course, he would move to strike out the section as reported, and then substitute his own proposition in a modified form.

Mr. Cummin congratulated himself that the whole of the proofs and arguments he had brought forward were uncontradicted. He now rose to wipe away a stain which had been cast upon him. The gentleman from Chester, and the gentleman from Philadelphia, had charged him with saying all who do not go out to the field are infidels. He did not say so.

Mr. Biddle, If the gentleman from Juniata, alludes to me, he must suffer me, with the greatest respect, to disclaim having applied any such expression to him.

Mr. Cummin said, he did not allude to the gentleman from Philadelphia. He then read an extract from the memorial of the society of Friends, to show that it was the language of that document, and not his own, which the gentleman had laid hold of. He had said that it was the belief of the society of Friends, that all wars are anti-christian. Then he had said, in his comment on this belief, that in this view, all who voted for wars are infidels, because there could be no third party. There could only be christians and infidels. It was wrong to charge him with applying the word infidel to any. These memorialists used the language themselves, and he must stand acquitted of the charge. The charter of William Penn, contradicted what these petitioners advanced, and expressed what he (Mr. C.) had said. The State of Pennsylvania was established on warlike principles. The grant was made to William Penn, on account of warlike exploits achieved by himself and his family. [Here Mr. C. read the first section of the grant.] The society of Friends had pleaded under the

grant of William Penn, and they were unable to show from a single sentence in that grant, that he intended that any portion of the people should be exempted from paying their just dues to the government. Pennsylvania being a military State, they who were the descendants from its founder ought not to be contending for any such principles as these petitioners asked. Mr. C. then read a further extract, being the 16th section of the grant, in order to refute the idea that there was intended to be any exception granted to any class, from paying an equivalent for personal service. It was considered enough if the society who had conscientious scruples, got rid of the personal service. There was not a word in the law to support them in their claim to be released from the payment of this equivalent.

What will the petitioners say to this clause? Can they get over it with all their sanctity of pretensions to be elevated above the other citizens of America and Europe. Their pretensions are unfounded, and it is a shame for them to ask for that which is denied to all our other citizens. Common sense should teach them otherwise than to ask such privileges. By the 16th section of this charter, power is given unto "William Penn, his heirs, and assigns, by themselves or their captains, or officers, to levy, muster and train *all sorts* of *men*, of what condition, or wheresoever born in the Province of Pennsylvania, for the time being, and to *make war*, and pursue the enemies and robbers aforesaid, as well by sea as by land; yea, even without the limits of the said Province, and by God's assistance, to vanquish and take them, and being taken, to *put them to death* by the laws of war, or to save them at their pleasure; and to do all and every other act and thing which to the charge and office of a *Captain General* of *an army* belongeth or hath accustomed to belong, as fully and freely as any Captain General of an army hath ever had the same." It will be seen therefore, by this paper, that William Penn never took such a ground as is now taken by these petitioners; and as he had said before, he would say now, that until their men can show that an attempt has been made to prevent them from worshipping God according to the dictates of their own consciences, they have no right to complain, and certainly we have never made any such attempt as that to interfere with their conscientious belief. The power is granted in this charter to William Penn, to act as Captain General, and to train all men—pursue the enemies of the State,—vanquish and take them, and put them to death by the laws of war. Is this not a contradiction of these petitioners to all intents and purposes? He should like to know how gentlemen would get out of this. It was just, right and proper that all men should be subjected to the laws, and that all should pay their proportion toward the maintenance of the government, and the defence of the Commonwealth. We had the highest authority for this, yea, even authority from on high. The scriptures said "Let every soul be subject unto the higher powers," and "they that resist shall receive damnation." These men, then, ought to submit to the powers of the government, and the laws of their country, if they wish to be the followers of the Prince of Peace. Their resistance is rebellion against the laws of the land, which is worse than wichcraft. The language of the Scripture was strong and emphatic, and in direct contradiction of the prayer of these petitioners. The language of the charter, too, was in contradiction of their prayer. William Penn never gave them the grant which they here contend for.—It was not to be found in any of the engagements of the Government of

England with him, nor was it to be found in any engagements of his with the people of Pennsylvania. War was lawful and justifiable, and he had clearly proven on a former occasion that the followers of the Prince of Peace fought the battles of their country. It was clear, therefore, that all persons should be held to defend their country, and upon their failing to do so, let them pay an equivalent. He wished now to say a few words to the gentleman from Northampton, (Mr. Porter,) who had introduced a new doctrine in relation to military law. That gentleman was for rejecting entirely our militia trainings and organization. Mr. C. was prepared to show that this militia system operated in a most beneficial manner; that it had existed for many hundreds of years, and that four kings had been redeemed from slavery by it. Yet the gentlemen from Bucks, from Northampton and from Chester, could see no necessity for militia trainings.

Mr. Porter, of Northampton, explained. He had expressed no sentiment whatever, derogatory to the character of the militia of the country. He desired to cherish them at all times.

Mr. Cummin: You admit that you preferred the volunteer to the militia system. As to the militia, Mr. C. believed it was the bulwark of the nation. He believed such exploits had been performed by the militia, organized as militia, that every nation on earth was satisfied of their efficiency. They had been spoken of here contemptuously, and alluded to as corn-stalk militia. Gentlemen should recollect, however, that it was a militia-man who brought down Gen. Ross, whose death, perhaps, saved millions for our citizens and our country. This was a matter that should not be looked over. We know there is one set of men in this country who are opposed to self-defence; and another who were in favor of being at all times ready for the fate of battles. This latter class are the true friends of the country; they are the men to be depended upon in the time of need, and they are the men who save the country when the day of trial comes. How soon we may have a war, no man knows;—and the prophetic warning of the Father of his Country was, to prepare for war in time of peace. We see a spark of war still unextinguished in Florida, and no man can say how our difficulties may terminate with Mexico. Let us then cherish our ancient militia system, which has shed lustre upon our arms on a hundred battle-fields. Every gentleman will recollect that it was militia-men—aye, unorganized, corn-stalk militia-men, if you please, who captured Major Andre, at a time when our great Captain General was in danger of being taken, and all the gold of foreign mercenaries could not effect a release of the captive. Those militia-men did an act which was worth countless millions to this favored land.—Had Washington been taken and Andre escaped, where would have been our independence, and those glorious institutions which are looked to as a refuge for the oppressed of all nations. The gentleman from the county of Philadelphia, (Mr. Martin,) had replied to some of his remarks on yesterday, and had made so free as to say that he, (Mr. C.) had never been in service and never fought. Now all he had to say in reply to that gentleman, was, that he was a little mistaken, as he was very often mistaken—and he would advise that gentleman in future never to make charges unless he was ready to lay his finger on the proof, as he, (Mr. C.) was not in the habit of stating things unless he could prove them. It was

useless for him to go over the argument which the gentleman from Centre, (Mr. Smith,) made on yesterday, as that gentleman had argued the question with such effect as to make it entirely unecessary for him to do so. He therefore would conclude by merely expressing the hope that the amendment of the gentleman from the county of Philadelphia might prevail.

Mr. JENKS said the gentleman from Juniata, (Mr. Cummin,) had entirely misapprehended him. So far from speaking disrespectfully of the militia of the Commonwealth, he would say that no man in the Convention had a higher or more exalted opinion of their patriotism and devotion to country. He threw out no such idea, because if he had done so, he should have considered that he was doing the yeomanry of the country great injustice. He believed they were competent on all occasions, impelled by that patriotism which is inherent in the breast of every American, to repel all attacks upon their country, let them come from what quarter they may. He had not lost confidence in the militia, and there was not so much difference between the gentleman from Juniata and himself, as the gentleman supposed. All the difference was that he did not believe that constant habit of training was necessary to prepare them to meet the enemy successfully. It was a kind of training and subordination which freemen will not be subjected to in times of peace, and he therefore hoped that it might be abolished.

Mr. CHANDLER, of the city of Philadelphia, rose to make an explanation. The gentleman from Juniata, (Mr. Cummin,) had mistaken a remark he had made on yesterday, in relation to the word infidel. That gentleman, as he thought, agreed that the petitioners to this Convention on the subject under discussion, many of whom he had the honor to represent in part, had cast an imputation of infidelity upon all who did not hold their doctrines. He wished to free this highly respectable class of our citizens from this charge. The gentleman from Juniata, will understand that that was intended but as a profession of their belief, and that such profession was not considered as tending to impute infidelity to those who acted differently from those who made this profession.— He very much doubted if there was a clause in the existing Constitution, which would require the gentleman from Juniata, and every other member of the Convention, to worship in a particular church, as for example the church at the foot of the hill, (the Catholic,) whether he would not decline doing so, and ask to have it removed from the Constitution, because he believed the doctrines of that church inconsistent with the christian doctrines. This would be exercising the free right of conscience, but would any one say the gentleman was charging the members of that church with infidelity? By no means. He knew not what was the gentleman's peculiar creed, nor did he know whether the gentleman cared what his was; but his heart was so full of the milk of human kindness, that he was willing the gentleman should worship where he chose, and how he chose;— provided he did not trench upon or disturb his church, or his mode of worship. The gentleman had quoted very liberally from the sacred volume, to show that war and military discipline was consistent with true religion. Now, we may go to the same good book and quote certain passages which will prove that all men shall go up and worship in one temple; but in practice on this earth, no one would ever think of such a

thing. Then as we cannot all agree as to our mode of worship, it becomes the established rule in our country, that every man shall worship God where and how he pleases, provided he does not interfere with the mode of worship of his neighbors. He considered that men should not only be allowed to worship God in the manner they saw best, but that they might have the privilege of exercising the right of conscience in every respect, without restraint. He hoped that the gentleman from Juniata might not hereafter charge a highly respectable class of citizens as charging infidelity upon all who did not concur with them in their religious opinions.

Mr. Banks could not for his own part see the propriety of talking about the christian religion or the opinions of one church or another in connexion with the question pending before the committee.—The motion made by the gentleman from the county of Philadelphia, is to strike out a portion of the fourteenth section of the report of the standing committee relative to the arming, organizing, equipping and disciplining the militia, and in his opinion, it was perfectly immaterial whether the motion prevailed or not. If it should prevail, and if the committee should agree to strike out this part of the report, he did not know that there would be any thing gained by the society of friends or any other society in relation to exempting them from militia duty. If then there would be nothing gained by it, he could not see the necessity of adopting it. The framers of the existing Constitution, undoubtedly intended this latter sentence in the clause as a qualifying sentence in the section, and any one who would read the whole section carefully, would see at once the propriety of this portion of the section remaining as it is. If the previous part of the section was to remain, it should be followed by the sentence proposed to be stricken out. If that portion was stricken out, there would have to be an entire modification of the remaining part. It must be entirely changed, but no gentleman has proposed an amendment for the whole. The whole section is as follows: "The freemen of this Commonwealth shall be armed, organized and disciplined for its defence, when and in such manner as the Legislature may hereafter by law direct. Those who have conscientious scruples to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service." Now this latter clause is a saving clause from the operation of the previous part. Unless the Legislature are somehow restricted, they may compel every man in the Commonwealth to bear arms, whether he belongs to the society of Friends, the Dunkers, Ominists, Menonists, or any other society. Unless something of this kind is left in the Constitution, the rights of these people will be left entirely at the mercy of the Legislature. What is to shield them from the operations of any law the Legislature may see proper to enact in relation to this matter, if this clause is stricken out. He looked at the previous part of the section, and he believed this clause was like the Crow country—precisely where it ought to be. He remembered to have read an anecdote of Bonnerilles in relation to an Indian chief, of the Crow tribe, and the Crow country. The old chief said the Crow country was precisely in the right place.—If it was any further north it would be too cold, and if it was any further south it would be too warm for the Crows—so that it was precisely in the right place. So with this provision, it was just in the right place. He was not desirous to impose any onerous duties on any class of citizens which ought not to be imposed upon them. The persons and

properties of all should be respected. His desire was that all should be treated alike, as government was founded for the protection of the persons and property of all alike; therefore he was opposed to removing this clause. In relation to our militia system, some gentlemen seemed to think it was not a good one—that it has not worked well—that militia do not conduct themselves as they should—that militia trainings present scenes of vice, dissipation and riot. He did not know how it was in other parts of the State, but he knew that the militia in his section of country conducted themselves with as much order and propriety, as that of any equal number of men congregated for any other purpose. There was no riotous conduct at militia trainings, generally speaking. At least no more than on election days, public vendues or other public meetings. Wherever large bodies of men collect, there will be some little disturbance, but there will be no more disturbance at a militia training, than at any other public assembly of an equal number of men. He regarded the militia as the bulwark of the nation, and went for continuing and cherishing militia organization, both in the ordinary mode and by the encouragement of volunteers. He regarded the volunteers, however, as no better than the militia. He regarded a volunteer company as no better than a neighboring company who carried corn stalks or bean poles, if you please. In times of war we had found that the volunteers conducted themselves no better than those who stood beside them, with half a coat or with no coat at all. How was it with reference to our last war.—The volunteers who marched from our own State conducted themselves no better at Black Rock than the militia who were marched into the western country under General Harrison. We all know that the militia performed their part better than did the volunteers, for they, instead of turning their backs when brought to the lines, crossed them, marched to Malden, fought the battles of their country and did not return until our frontier was rendered safe. He knew there were some of the volunteers who were willing to cross the lines and enter Canada; but he knew also that there were some who would not go. The militia and volunteers then must be placed on the same footing. You cannot make soldiers by training them as volunteers, so that you may as well depend upon the militia in time of war, as upon volunteers. He had no doubt it was the desire of every member of the committee, so to act as to do justice to all classes of society; and he regretted very much that there had been an attack made on any class of persons, because of their conscientious scruples in relation to bearing arms. He regretted also that any class of persons should ask to be relieved from doing service to their country, in time of need. He regretted it because of the opportunity it gave for abusing the privilige. He knew that conscience made cowards of us all. He knew some would avail themselves of the plea of conscience for the purpose of relieving them from the performance of military service in defence of their country, and he believed it would be found when the hour of trial came that those men who owned least property, and were farthest removed from honors and emoluments of office, would be the first to step forward in defence of their country's rights and the rights of those of their more wealthy neighbors, who perhaps might desire to deprive them of the rights of freemen at the ballot box. If we refer to the times when troops were raising for the defence of our soil from foreign invasion, it will be found that the men of small property or of no property, were

the first to enter the ranks, although they had the least to protect. That being the case, we should extend to this class of our citizens, all of the privileges in our power. The law makers of the State should legislate for this class of men in such manner as to make them feel that they are on an equality with their neighbors and not treat them in a manner to make them feel as though they were eunuchs or servants in the Commonwealth. As he had said before, unless some change was made in the previous part of this section, he could not see how the latter part could be stricken out. It seemed to him, that the Constitution, as it stood, was a sufficient protection to all persons. His desire was to respect the conscientious scruples of all our citizens, but the difficulty with him was, as to how this should be effected, as the Constitution should be framed for the benefit of the greatest number of persons.—Upon a reference to the minutes of the Convention of 1790, it would be found that this section was adopted by a vote of forty-nine to ten.—This appears to have been a very decided majority in its favor. So that he thought it was a tolerable strong evidence of the justice of it. He thought the section ought to be retained as a whole. We are now, to be sure, in the enjoyment of peace, but the surest plan was to keep a militia always organized, so that they might be speedily called into service, when they might be needed. His hope was that we might have no quarrelling among ourselves, or with any foreign nation, so that there might be no necessity for taking up arms; but whilst men are what we know them to be, it is not to be expected that we shall have peace forever; therefore, the safest plan was to prepare for war in time of peace.

Mr. M'Cahen said that after listening to the argument of the gentleman from Mifflin, (Mr. Banks,) he was at a loss to know how to vote upon the amendment. From the turn which this discussion had taken, it appeared to him that the better course would be for the Convention to resolve itself into a court of conscience, and enquire how far conscience was to be respected and what was to be regarded as conscientious scruples. It is impossible for us to tell what is the wish of all our fellow citizens, on this subject. It is true, that the militia trainings, particularly in his section of country, had been a great cause of excitement; but had the laws been faithfully observed, he did not believe that disgraceful scenes would have so frequently occurred. If militia men would turn out and elect good officers, there would be more observers of order on training days. Conscience is a matter that lies in every man's bosom, and it is for him to determine how far his conscience will allow him to go. A man may be conscientious, scrupulous about paying taxes, or about obeying the law of the Commonwealth, but it does not follow that his conscience is entitled to respect. Every man is bound to respect the laws. Every man's property is protected, and every man is bound to contribute his share for the common defence of the country. The government protects every man in his rights, and allows him to employ his industry in such manner as to be of most advantage to himself, and why should any man ask to be relieved from defending that government.

Mr. M'Cahen, in continuation, said:

He was in favor of the amendment, because it proposed to strike out of the old Constitution that which was an unequal and partial law, which

bore upon one portion of the community and not upon the whole. In all matters relating to the public defence, and to the general concerns of our government, all men should be participants. Every man was bound to defend his home and his fireside, and every man who claimed the enjoyment of political rights ought to defend them. He believed that the respectable society, who petitioned to be relieved from military duty, did not ask to be relieved from the enjoyment of any political rights. They did not find these rights burthensome, nor opposed to the scruples of their consciences. Even on election days, when there were many causes of excitement, they still participated in those scenes; and although he esteemed the society of Friends as highly as any other class of men, yet, on election days, they were as forward as any in the assertion of their rights. They knew what those rights were, and were determined to maintain them. If they could be found exercising their rights on election ground, they ought also to be required to defend their country when assailed by a foreign foe. The militia of the Commonwealth properly armed and disciplined, was the great means of our national defence; and it was only those who abused and ridiculed the system, and aided in the election of improper officers that brought discredit upon it; and he was aware that, in his section of the country, there were many who contributed to this discredit, by electing improper officers. This only proved, however, that the system was abused. He was in favor of the amendment, and hoped it would prevail.

Mr. REIGART, of Lancaster, said he was in favor of the amendment of the gentleman from Philadelphia county, but for reasons different from those which had been assigned by the gentleman who had just taken his seat. He (Mr. R.) intended to vote for the amendment, because it would leave all details to the Legislature where they properly belonged. The Legislature had heretofore refused to interfere with militia trainings, in consequence of the imperative language of the present Constitution. He was willing that that language should now be so modified, as to leave all details to the representatives of the people. When the amendment was first proposed yesterday, he felt opposed to it, but subsequent reflection had changed his mind, and he was now willing to go for it. But, in going for it, unless the friends of this proposition went one step further, he should hereafter move an amendment. He had no idea of leaving to future legislation a strong temptation to dispense with all militia trainings except in case of exigency. The term "exigency" was broad and indefinite; it meant a great deal; and it might be said that it applied only to actual invasion, or to a time when the enemy was at our very doors. He was therefore for restraining the Legislature in some degree, and not for directing their power to "exigencies" only; but in other matters he was willing to trust the representatives of the people He was desirous, however, that the matter should be brought to a conclusion now. The minds of the members of the committee had been drawn to this subject, and they were as ready now to settle the important principle involved, as they would be at any time hereafter; and if a decision was to be postponed until the ninth article was reached, they would then have to ransack their memories for the arguments which had been urged, and probably the whole discussion might be gone over a second time. It would be better, therefore, to settle the point at once.

The report of the committee, continued Mr. Reigart, on this subject,

numbered twenty-one, and which was to be made a part of the ninth article called the Bill of Rights, is in the following words:

"Those who conscientiously scruple to bear arms shall not be compelled to do so, nor pay an equivalent therefor, except in times of exigency or war." Of this report I presume we shall hear more when the ninth article comes up, and I am anxious to know what can be said in favor of such a report at the present time, if at all. I apprehend it will be much more in its place here than any where else. It will not be in *its* place, on the ninth article, as that article has no reference to military duty. I therefore expect to hear the discussion at this time. To the Bill of Rights, the people look with great jealousy; and any alteration in it at this time would be viewed as though this body had legislated for a particular class of the people. Whilst I entertain a proper respect for conscientious scruples, I will not vote for raising up a privileged class in this Commonwealth; though I do not suppose that such is the design of the friends of this measure. If it is so, we had better know it at once. Among my constituents there are Menonists, Ominists and Dunkers; and I have myself sprung from the Menonists; yet not a word have you heard from them. They have always paid their fines. They scruple indeed to bear arms, but they are not chary of their purse. I do not understand that we are asked by the society of Friends to create a privileged order; but we are called on to refer the entire matter to the Legislature, and to say that the society of Friends shall neither bear arms nor pay an equivalent therefor, *except in times of exigency or war*. This is leaving too much to the Legislature, and I cannot go so far. This report is in strong directory language; it is an invitation, nay, it is a command held out to the Legislature, which says, you must not impose any fines nor enact any laws to bear on those who have conscientious scruples, unless the enemy is at your door, or fighting in the town. Such will be held to be the meaning of this sentence, if ever it should come before the legislative body. I am unwilling that any doubt should remain; I wish the whole matter to be left clear and intelligible. It is undoubtedly the right of every citizen to receive protection at the hands of his county, for his person and property; but this protection must be reciprocal. I receive protection from my country, and I am bound to protect her in return. But here it is said, perhaps justly, that conscience interferes and says, you must not bear arms, you must not take the life of a fellow-creature; it is not in accordance with the principles of christianity to do so. It may be so: nay, I go farther, and say that I believe it is not in strict accordance with the doctrines of christianity, yet such is the infirmity of our natures that we do not practice its peaceful precepts. But whilst I say this, I say to those who hold these conscientious scruples, you must pay an equivalent for personal services. It is not right that I should bear arms, and that you should refuse either to bear arms, or pay an equivalent. It would be holding out an invitation to all to come and say they had conscientious scruples against bearing arms. I do not believe that the friends of the petitioners intended the measure to bear such a construction; but a strong inference might be drawn, on which the Legislature might dispense with the matter altogether, except in cases of actual invasion or war. I therefore hope that the amendment of the gentleman from the county of Philadelphia, will be agreed to; and that the friends of the measure will pledge themselves here, that when they come to the ninth article, no attempt shall

be made to put any thing of this kind into it. I shall then be willing to let the section stand as it is, although probably some slight modification might be necessary. If this is not done by the friends of the measure, I shall at a proper time offer an amendment.

Mr. PORTER, of Northampton, said that as the report of the committee on the ninth article of the Constitution had been referred to, and as he had in some measure been called upon by the remarks of the gentleman from Lancaster (Mr. Reigart,) it became his duty to say a few words in reference to the subject contained in that report.

It seemed to have been taken for granted, in some way or other, that he was in some measure the champion of the society of Friends. Such an impression might have arisen from the fact, that he presented the first petition which had come from the society of Friends in reference to this subject; but he begged gentlemen to remember that, at the time of presenting that petition, he had expressly reserved to himself the right to such action as, upon reflection, he might deem most proper. He stood there wholly uncommitted as to the course he should pursue.

When the subject was brought before the committee appointed on the ninth article of the Constitution, and of which he was the chairman, the committee took the matter into consideration pursuant to the direction of the Convention. The result of their deliberations would be found in the report which the committee had made, and which would hereafter come up in its proper place, if it should not be anticipated by the course of this debate.

Whatever might have been the individual opinions of the members of the committee, courtesy required that they should report a provision in some degree favorable to the prayer of the petitioners, in order that the subject might be brought before the Convention, and be there discussed. Such, at least, were the views of one of the committee—he alluded to himself; and if he should hereafter be satisfied that the provision proposed in the report would be injurious to the interests of the Commonwealth, he would not be found its advocate. The delegate from Luzerne (Mr. Woodward) had supposed some difficulty might arise in the construction of this provision, by limiting it to times of exigency or war. Such was not the intention of the committee, and such would not be the effect of the report they had made. The effect of that report would be simply this; that although you might enroll, officer, and make ready your militia for the defence of the country, yet where a man entertained conscientious scruples as to bearing arms, he should not be compelled to pay a fine, as an equivalent, in time of peace, when it would be supposed the mustering of men, reluctantly compelled to attend the trainings, could not result in any public good.

And here he would correct a mistake into which some gentlemen had fallen, when they drew a distinction between the militia and the volunteers. He included both in the militia; although he confessed he could not understand the logic which made the services of a volunteer, who came forward for duty of his own free will, less efficient than the services of men who were compelled to perform the same duty. He thought that the volunteer performed his duty more cheerfully than a man who was brought out merely in obedience to law. I draw no invidious dis-

tinctions, said Mr. P., between the one and the other. But I can point to a case, and I call upon my friends who were there, and who can say, with me, in the language of the Mantuan Bard, "all of which I saw and part of which I was," to bear testimony to the truth of what I say—look to the volunteers at Camp Mifflin! Napoleon himself never had more efficient or better disciplined troops than were to be found in that camp; and they, with one or two exceptions, were all volunteers. I speak of what I saw and know. I find no fault with others; but I will say that here is proof, if proof were wanted, to convince the most sceptical, that volunteers, when properly officered, are the most subordinate soldiers in the world. They are freemen; and it has been well observed that a freeman's arm could best defend a freeman's home. They went voluntarily to work, with a spirit and a patriotism, the results of which no man could doubt.

But as to conscientious scruples. He confessed that this was a most difficult question. No law could be enacted of which a bad man might not avail himself, and here lay the difficulty and delicacy of the subject. No man more sincerely respected conscientious scruples than he did, and where a man sincerely entertained such scruples, the principles of our Government said that they should be respected. He knew that many men would avail themselves of the exemption who were not entitled to it, and here the great difficulty lay. But it was not possible for a man who did not entertain these scruples, properly to feel and appreciate the motives of the man who did entertain them. For himself, he had no such conscientious scruples. He never had; but the sect, said Mr. P., to which I and my forefathers, and you and your forefathers belonged, had held these conscientious feelings, and they became exiles from the land of their birth, in order that they might enjoy the rights of conscience unmolested. I therefore cannot but feel and respect these scruples in others, although I may differ from them; and whilst I cannot accord in sentiment with them, I will at least give them credit for honesty and sincerity in their faith. I do not think it becomes any member of this body, whatever his own feelings may be, to find fault with the consciences of others. As to the effect which such a provision might have upon the interests of the country, that is a fair subject for discussion; but whether their scruples are right or wrong, is to me a matter of no consequence. If they are sincere in what they believe, they are entitled to respect. How far protection should be extended to them, it is for this body to determine; but that you are bound to extend protection to them, so far as can be done without injury to the body politic, I am free to allow.—These, sir, are the principles which have governed me; and I declare myself willing to adopt any measure which can safely be adopted, to protect them in the enjoyment of these rights of conscience. I have examined this subject in all its bearings with some attention, in consequence of the peculiar position in which I stand; and the result of my convictions I gave to the committee of the whole, yesterday. I would not now have added a word, but for the manner in which I have been called upon. I have consulted with a number of gentlemen who feel more interest in this question than I do; and I believe they have agreed, that, if the amendment ot the gentleman from the county of Philadelphia shall prevail, the provision reported by the committee, shall not be insisted on when we come to the Bill of Rights. The result will then be that

you leave the whole subject to the Legislature, and that you do not make exceptions in favor of any peculiar sect. All our citizens will be placed on one footing; no privilege will be granted, and nothing will be held out as a boon to particular classes. I hope, therefore, that the amendment of the gentleman from the county of Philadelphia may prevail; and I will say in answer to the remarks of the delegate from Lancaster (Mr. Reigart) that, in such event, the report of the committee will not be urged when the Bill of Rights shall be taken up for discussion.

Mr. MARTIN, of Philadelphia county, said he did not suppose that he could add any thing to what had already been said, calculated to have a beneficial effect on the minds of this committee. But he would offer a few remarks, with a view to bring the committee back to a right understanding of that which the society of Friends had asked, and that of which they had complained; so that the committee might not, as had heretofore been the case, run into mistaken ideas as to the real nature of the question before them.

The society of Friends, in the memorial presented here, complained of mistaken views which had been adopted in reference to themselves, by the Convention which framed the existing Constitution. This mistake, which had crept into the second section of the sixth article of the present Constitution, was a mistake of a very serious character, yet doubtless originated in the most pure and good intentions. The section provided that the society of Friends should not be compelled to bear arms, but that they should be compelled to pay an equivalent for personal services.—Now the society of Friends complained, in the petition, that that which was no doubt intended to be a relief, and to prevent oppression, had actually become oppressive in its operations. Such was precisely the fact. The Convention which framed the present Constitution, intended to benefit the society by the provision therein inserted; but the practical operation of the provision had been oppressive, and had led to all the difficulties and prejudices, fears and jealousies, which have existed. They had not asked to be made a privileged class, to be exempted from the payment of their proportion of the burthens of the Government. It had been stated that if this precedent was established, they would refuse to contribute towards the expenses of the Government. Let us not fall into a mistake in this respect. If the Friends were right in objecting to bear arms, and they chose to abide the consequences, why not let the consequences fall upon them? Why single them out and say that they shall be the objects of plunder and robbery, as they had been under the existing Constitution? He thought that no man who would examine the memorial, could doubt that the second section of the sixth article of the Constitution, which provided that they who had conscientious scruples against bearing arms, should pay an equivalent for personal service, instead of being, as it was designed to be, a remedy, had proved deeply injurious. And, whilst an idea went abroad from this Convention, that the society of Friends was to be a privileged class, it had a great tendency to work injury to that class. They made no such request; they simply asked that no provisions might be inserted on the subjeet. It might not become him to say much on this subject, particularly at the present time. He had merely risen to urge upon the committee not to mis-conceive the real object which the society of Friends had in view, and to insist that, in acting on the question

now under discussion, it should be kept distinct from all consequences which might follow in relation to the Bill of Rights.

Mr. DARLINGTON, of Chester, said he did not rise to enter into an argument, but merely to say that the gentleman from Northampton, (Mr. Porter,) had spoken without authority from him, when he stated that the provision reported in the Bill of Rights, was not to be insisted upon. He (Mr. D.) wished now to state, that he was not committed by any such disclaimer. On behalf of his constituents, he felt it essential that some such guard should be thrown around their rights, either in the ninth article, or in some other place; and he did not wish to be considered as giving up these rights.

Mr. PORTER said he regretted he had so misunderstood the gentleman from Chester, (Mr. Darlington.) In the interview between them this morning, he (Mr. P.) had considered that the views of that gentleman were such as he (Mr. P.) had stated.

Mr. DARLINGTON said he could only state that he had had no such understanding.

Mr. MEREDITH, of Philadelphia city, said that he could have wished that this discussion had been deferred until the Bill of Rights came up for consideration, inasmuch as a petition on the subject had been referred to the committee on the Bill of Rights, who had reported a proposition in relation to it. But as there now appeared to be a difficulty between gentlemen of the committee who made the report, one declaring that the provision should be given up in the Bill of Rights, and the other that there was no intention so to give it up, he thought that it would be better that the discussion should proceed at this time, in order that the question might be finally settled.

The amendment now pending, proposed to strike out that clause of the Constitution which related to those having conscientious scruples against bearing arms. It appeared to him that this amendment did not present the matter in such a point of view, as was likely to meet the wishes of this Convention, excepting only a small portion of its members. Most of the members believed that the clause should be altered; some that it should be altogether struck out,—but the latter were few in number. Some preferred that it should stand as it now stood; and a large portion, who desired that it should remain with some alteration, had not yet enjoyed the opportunity of expressing their opinions. If this amendment was agreed to—if the clause was stricken out, it would be difficult to restore it; but all the discussion now had, would be thrown away, and a new discussion must hereafter arise. He trusted, therefore, that the gentleman from the county of Philadelphia, (Mr. Brown,) would withdraw his amendment, and thus allow such propositions to be made, as would meet the views of different gentlemen.

His own views he would now briefly express. It seemed to be conceded, in reference to the general question of the militia, that there was a mistake in the existing Constitution, in the insertion of an absolute provision, for arming and disciplining the militia; and he believed it was agreed that that provision should be so altered as to leave a discretionary power somewhere or other. All, he thought, agreed that the clause requiring that the militia should be armed and disciplined, was not proper. Look-

ing to this as the basis of the argument, the next question was, in what cases should the militia be armed and disciplined, and where should the discretionary power be reposed? It seemed to him that the Legislature was the only body in which it could be reposed; but when the Convention proceeded to give that power, the question arose, was there, or was there not a class of our citizens, in reference to whom the power of the Legislature ought to be so limited, as to prohibit them from requiring that the class of citizens alluded to should bear arms, because of conscientious scruple, which ought not to be violated? And this question divided itself into two branches; the first having reference to a time of peace, and the second to a time of war. After the experience of fifty years, for he believed we had no militia previous to the Revolution, he felt no disposition to indulge in theoretical speculation. He would ask of what practical use had it been, to arm and discipline our militia, as such by law, in time of peace? He would answer that he defied any gentleman to shew a case where they had been of any use to the country, either in time of peace or war. We all knew what our militia trainings were. We had heard them repeatedly described, and they formed topics on which declamation might be indulged to the end of time. We knew them; we had seen them; we had felt the evils which attended them, and we knew that it had from time to time been matter of regret to the Legislature of our State, that there was in our Constitution an absolute provision which prevented them from putting a stop to these trainings, and, consequently, to the scenes of vice and demoralization by which they were accompanied.—With this experience before us, might we not safely say—without drawing any line between different classes of our citizens—that, in time of profound peace, no citizen, whether having conscientious scruples or not, should be vexed by these trainings, or be compelled, against his own will, to attend them; and leaving it discretionary with the Legislature to say, whether a necessity for training existed or not. So far as disciplining the militia in time of peace had ever been found useful, it would, by such a clause, be continued. By such a clause, we should remove, for a long time, it were to be hoped, all the difficulties in relation to those who had conscientious scruples against bearing arms, and we should, at the same time, remove a great burthen from those who had conscientious scruples, but who were compelled to turn out without any necessity for so doing, and who, if they did not turn out, would have to pay to the Commonwealth a heavy fine, not only in money, but in the heavier loss of their time and labor. What principle could be injured by such a provision?

Why, he would ask, should we saddle ourselves with this system, when every thing is in a state of profound quietude? And, why should we not sanction a proposition which shall leave to every man the privilege of arming himself; thus enabling the citizens to discipline a militia, if they chose to do so, but which the law shall not compel them to do? In the event of the exigency of a war arising, then it might be well enough that the Legislature should have the power to act on the subject. According to the bill of rights, every man would be left free to act in defence of his country. The question now was, what provision ought to be inserted in the Constitution providing for the exigency of war? The gentleman on the other side of the house (Mr. Reigart) had remarked, that it was difficult to say what was an exigency. But he (Mr. M.) would inquire if we could do more than leave to the Legislature of the Commonwealth to de-

clare when that exigency existed? We left it to the representatives of the citizens of the State to declare when that exigency shall exist, and to declare that we must look to the defence of the country. There would be but a small chance of safety for us, if the Legislature would not act when an exigency should arise. He, however, could not anticipate such a state of things. Indeed, he was not willing to suppose that a time would ever arrive when the country could not be defended, and that, too, without an entire revolution in our government. So long as (and he trusted that would always be) the Legislature was composed of the immediate representatives of the people, he looked upon such an event as utterly impossible to arise. He would declare, then, that he had no objection to leave to the Legislature the power to declare when an exigency shall arise. It might be asked, supposing war to take place, what shall be done with those who conscientiously scruple to bear arms? Shall we say that they shall pay an equivalent for their service, or shall we undertake to say, by the Constitution, that they shall bear arms? But, how could we say this? It was morally impossible to compel a man to bear arms, if he refuses to do so. He, however, entertained no fears that those who conscientiously scruple to bear arms, would in the moment of danger, be found as ready as any other portion of citizens, to rally to the defence of the country. It would be unfair and uncharitable to assume that they would not. The instinct of self-defence was as strong as any in our nature; and they would be found as much actuated by it as any of us. As that portion of our citizens, denominated the society of Friends, and who, it was known, entertained conscientious scruples on this subject, had been alluded to in the course of the present discussion, he would ask gentlemen what had been the history of their conduct from the earliest periods—from the time of Penn to the present hour? At what period of emergency and of danger was it, that the society of Friends had been able to restrain its members from taking a part in the contest? With all their conscientious scruples, he would repeat that their own body could not prevent their members from taking up arms. In the year 1743, when Pennsylvania was under Governor Gaskin, and the mother country at war with France, George Baker, a Quaker, spread a report that a French squadron was in the Delaware, when the whole community, with the younger branches of the society of Friends in Philadelphia and the neighborhood, flew to arms. Such was the very natural instinct of their natures. The elder branches of the society knew not what to make of this extraordinary movement. And how, he would ask, was it during the revolutionary war? Notwithstanding scruples of conscience, a large portion took up arms in defence of the liberty and independence of their country. He did not speak of those who permitted their conscientious scruples to prevent their shouldering a musket, and particularly the elder members—who, in all societies, are not compelled to participate in actual combat—nor, did he speak of those who remained at home to dress the wounded and take care of the prisoners, but he spoke of those who, in defiance of their own rules, and from a principle of self-defence, rallied to the protection of their country. They are called free Quakers, and adhere to most of the principles of the old Friends. There was, a few years ago, a connection of his, a Friend, yet who commanded a troop of cavalry during the war, and fought with great gallantry, and after the peace, rejoined the society, and remained for many years a much respec-

ted member of it. He (Mr. M.) would say, looking to the history of that society, that they were more distinguished for peaceable pugnacity, than any in existence; yet their whole action had been continually at war with the opinions and prejudices of the world. If we took them man for man—and there were abundant facts to demonstrate the truth of his assertion—they would be found to have given personally their full share, as a society, towards the defence of the country. Among the generals of the revolution were many Quakers, to whom we owed the regularity, the order, the discipline and the determination and perseverance which was instilled by them into the minds of the troops under their command. And, these were the men whom some gentlemen wished to break down, to annihilate, because they entertained conscientious scruples in regard to bearing arms. Who was General Greene? Why, one of the most distinguished commanders during the revolution, and a Quaker. It would be found, on examination, that the society of Friends had furnished as many, if not more military commanders, in proportion to its numbers, than any other religious denomination in the United States. Gentlemen, he apprehended, would recollect the facts as connected with the last war, and the emergency which arose and induced a split in the society of Friends. The North-East and North-West frontiers were attacked, and notwithstanding the clause in the Constitution of Pennsylvania, not compelling those who have conscientious scruples to bear arms, and although there were plenty of men ready to shed their blood in defence of the country, yet such was the enthusiastic and patriotic ardour of many of the quakers, they sacrificed their conscientious scruples, and offered their services in defence of the country. Why, then, he would ask, should any gentleman desire to expunge from the Constitution the section in relation to exempting those who entertain conscientious scruples, from bearing arms? He knew that the gentleman from the county of Philadelphia, who sat in front of the chair, (Mr. Martin) felt that even if this provision should remain in the Constitution, that in time of war, it would still be a burden he would like to get rid of. He (Mr. Meredith) maintained that we ought to feel a respect for the conscientious scruples of men. But, whilst he did this, he should contend that where services were not rendered in time of war, an equivalent should be paid. He, however, saw no reason why we should interfere at all. By doing so, we left them in time of war at the mercy of all the excitement of the period against them. Now, he wished to avoid this, and had prepared a proposition, which he would offer when an opportunity should occur, in such a shape as to be able to get a vote taken on it. It was to provide that in a time of profound peace the volunteer system should be allowed to go on; that they shall be assisted by the public, if deemed proper; that no one shall be compelled to attend militia trainings or musters, nor be subjected to compulsory fines; and that, in time of war, those who have conscientious scruples shall be situated as they are at present, compelled to pay an equivalent for services which conscientiously they cannot render. He, under the present circumstances, should feel himself bound to vote for the amendment. He thought the existing provision in the constitution, as good as any that could be substituted for it. If the gentleman from the county of Philadelphia (Mr. Brown) would withdraw his amendment, the gentleman from Fayette would then have an opportunity of pressing his, which he (Mr. Meredith) regarded to be salutary as far as it went.

Mr. Brown, of Philadelphia county said, that he would like to accede to the wish of the gentleman from the city, if he could, but he thought that the question would be better determined by taking the question first on this amendment, and afterwards on that of the gentleman from Fayette (Mr. Fuller.) The gentleman from Chester, (Mr. Darlington) might then call up his amendment, and thus would the whole question be before the committee.

Mr. Bell, of Chester, remarked that if the amendment of the gentleman from Philadelphia county should succeed, he should move to amend by adding report 21, if it would be in order to do so. He would now ask that question of the Chair.

The Chair said, that it would be for the committee to say whether the proposition was inconsistent or not. He considered it to be in order to submit it to the committee.

Mr. Clarke, of Indiana, asked for the yeas and nays; and, the question being taken, it was decided in the affirmative, as follows, viz:

Yeas—Messrs. Agnew. Baldwin, Banks, Barndollar, Bedford, Bell, Biddle, Bigelow, Bonham, Brown, of Lancaster, Brown, of Philadelphia, Carey, Chambers, Candler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Cope, Craig, Crum, Cummin, Cunningham, Darlington, Denny, Dickey, Dickerson, Donnell, Dunlop, Farrelly, Forward, Fuller, Gamble, Gearhart, Gilmore, Harris, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Ingersoll, Jenks, Konigmacher, Long, Lyons, Martin, M'Cahen, M'Dowell. M'Sherry, Meredith, Merrill, Merkel, Montgomery, Myers, Nevin, Pennypacker, Pollock, Porter, of Lancaster, Purviance. Reigart, Read, Riter, Rogers, Royer, Russell, Saeger, Scott, Smith, Snively, Stevens, Thomas, Weaver, Young, Porter, of Northampton, *President pro tem*—79.

Nays—Messrs. Barclay, Brown, of Northampton, Clarke, of Indiana, Crain, Crawford, Curll, Dillinger, Donagan, Foulkrod, Fry, Grenell, Hiester, High, Houpt, Hyde, Keim, Kennedy, Kerr, Krebs, Magee, Mann, M'Call, Overfield, Ritter, Scheetz, Sellers, Seltzer, Shellito, Smyth, Sturdevant, Taggart, Woodward—32.

Mr. Read, of Susquehanna, moved to amend the section by striking out all after the word "the," in the first line, and inserting "citizens of this Commonwealth shall be enrolled, and in case of threatened invasion, or insurrection, shall be armed and disciplined for its defence."

Mr. R. said, that this section, as reported by the committee, had never met his approval. It was reported, however, in obedience to the order of the committee of the whole. In his opinion, the change which had been made in the very first word of it, made an essential difference.—The word "freemen" had been struck out and the word "citizens" substituted for it, the effect of which would be to exclude "aliens" and "Africans." Now, he proposed to show that we ought to exclude both. By the terms of the Constitution, if thus amended, neither aliens nor Africans would be recognized as citizens of the Commonwealth. Why, he would ask, should we exclude aliens? In the first place, we had citizens enough of our own to defend the country, without calling in the aid of aliens. In the next place, they might happen to owe allegiance to a country, with which we might be at war. And, no man, in his opinion, whose allegiance was due elsewhere, was fit to be a militia man, nor should he be entrusted with so important a duty. Again: he might have to do an act in pursuance of the laws of the Commonwealth, which would, perhaps, subject him to an ignominious death on the gallows as a

traitor, if taken in arms against the country to which he owed allegiance. He conceived there was no necessity for placing aliens in this unpleasant condition—of imposing upon them so cruel an obligation There could be no object in training them, unless with a view to having their services in time of war. His opinion was, that we ought to change the word "freemen" to "citizens;" and he thought that the reasons which he had given were sufficiently conclusive to induce gentlemen to agree to the adoption of that course. With regard to enrolling the coloured population of the State, he would say that it was contrary to the common sense of the community, that coloured men should be marshalled and march side by side with white citizens. Such a proposition, he was sure, was so abhorrent to the feelings of the people, that if a provision were inserted in the Constitution of that character, it could not be carried into effect by the Legislature. Although the word "freemen" was used in the Constitution, the Legislature finding it impossible to overcome existing prej udices in relation to associating with persons of colour, were obliged to violate the spirit of that instrument in passing the military law, which provides that all free male white citizens shall be enrolled. In order, then, to avoid a future violation of the Constitution, which had been found so necessary, we should strike out the word "freemen" and insert "citizens." As to militia musters, gentlemen would perceive, if they examined his amendment, that it embraced the idea thrown out by the gentleman from the city of Philadelphia, (Mr. Meredith) that, in a time of profound peace, when no man anticipated war or invasion or an insurrection in the country, and when, too, the Legislature are not willing to take the responsibility of saying to the people that danger was at hand, there should be no militia musters. He held that there was no necessity for them in these times, and for the last ten or fifteen years, they had been productive of no good, but much evil. As to the Legislature, and no one liked to take the responsibility of saying that there was a probability of requiring the services of the militia, he would not wish to impose this duty upon them, nor under all the existing circumstances, subject the Commonwealth to an annual expense, as had been the case for years, of half a million of dollars, and that for no earthly good, but much evil, as had already been stated by gentlemen who had spoken on this subject.

He hoped that his amendment would be agreed to in its present form, as it would supercede the question in relation to conscientious scruples, and would satisfy the Friends, as it would relieve them and all of us from an oppressive and burdensome duty, which was wholly unnecessary in peaceable times, and productive of great immorality.

Mr. Meredith, of the city, remarked that he liked the spirit of the amendment, but he could not concur in the proposed change of the word "freemen" for "citizens." He thought, too, that we ought not to prohibit aliens who had made this their adopted country, from bearing arms in its defence in time of war. He did not wish to affix a stigma upon them, by putting any thing in the Constitution which would induce the belief that they were not to be trusted with arms. He thought that there were but few foreigners who came among us, and acquired property and resided here for some time, who did not feel a disposition to defend their adopted country.

Mr. M. would move to amend the amendment by adding, "the militia

officers shall be appointed in such manner and for such time, as shall be directed by law."

Mr. Bell said, we had already adopted a provision which superceded the necessity of this. The 6th section says: "all officers whose election or appointment are not provided for in this constitution, shall be elected or appointed as shall be directed by law." Of course this includes military officers.

Mr. Meredith said, that provision appeared to embrace civil officers only. It had also been proposed to alter that provision and it might still be altered. At all events it might be better to provide separately for the appointment of military officeis. He would propose, however, to leave the matter to be thought of, between now and Monday morning, and with that view, he moved that the committee rise.

The committee rose; and,

The Convention then adjourned.

MONDAY, October 23.

SIXTH ARTICLE.

The convention again resolved itself into a committee of the whole, Mr. Chambers in the chair, on the report of the committee on the sixth article.

The question pending, being on the motion of Mr. Meredith, to amend the amendment offered by Mr. Read, by adding to the end thereof the words, "the militia officers shall be appointed in such manner, and for such time as shall be directed by law."

Mr. Meredith withdrew his motion to amend for the present.

Mr. Fuller then moved to amend the amendment of Mr. Read, by striking out all after the word "the" in the first line, and inserting in lieu thereof, the words following, viz: "freemen of this Commonwealth shall be enrolled and organized, to be armed and disciplined for its defence as may be directed by law."

Mr. Fuller in explanation of his object, in offering this amendment, said that he was induced to make the proposition, because he believed that the people did not wish to dispense with the militia system, and that they would reject the whole Constitution, if the amendment of the gentleman from Susquehanna prevailed. The enrollment and organization of the militia, he considered as essential to the best interests of the State; and without going into an examination of the immoralities of trainings, he would say that militia trainings in his opinion, were quite as honourable as volunteer trainings. Let it be stated specifically if we shall have a train-

ing once a year, or even in two or three years. Let the people be at liberty to say how often they shall take place, and he knew the gentleman from Susquehanna would agree with him, that the people are the proper authority to decide this question. With respect to the old Constitution, and the provision concerning the society of Friends, it was all complete as they wished it to be. They only asked that the exception might be stricken out, and the amendment was made to accommodate them. If this was all they asked, his amendment was sufficient. They only desired to dispense with the exception which operated on them as a burden, rather than a relief, and his proposition therefore must meet the approbation of that society.

Mr. Brown, of Philadelphia, said that there seemed to be three opinions thrown out in reference to this matter. The first was that the whole subject should be left to the Legislature. The second was that suggested by the gentleman from Fayette, (Mr. Fuller,) that the militia should be enrolled and organized, and that it should be left to the Legislature to direct when they should be armed. The third opinion was, that of the gentleman from Susquehanna, (Mr. Read,) that the militia should be enrolled and not officered, organized and armed, until the exigency should require. He was in favor of that suggestion which required that the militia should be enrolled now, and not officered, organized and armed, until exigency required. He thought it would not be proper to officer the militia generally in times of peace, as those officers might be good for war. He would therefore dispense with the officering the militia, until they should be called into actual service, and then such officers might be selected as wonld be competent to lead into battle. Therefore, for the reasons he had given, he should feel himself compelled to vote against the amendment of the gentleman from Fayette.

Mr. Read said that when he had submitted his amendment, he had offered some explanatory remarks, but as it was about the dinner hour, he believed they had not been listened to with much attention. He would therefore ask again the attention of the committee for a few moments, while he endeavoured to explain his amendment, and compared it with that of the gentleman from Fayette. The amendment he had offered contained two separate ideas, and he intended to call for a division of the proposition, and to make the first branch end with the word "citizen." There were some who are in favor of dispensing with musters, who objected to change the word "citizens," for the word "freemen." He thought it should be altered. There was a number of aliens and Africans in the State ; popular prejudice would not sanction a general association with coloured people. It had been sufficiently strong to prevent such association without any special exclusion in the Constitution. The introduction of the word "white," into the Constitution, for the purpose of expressly excluding coloured people from the right of suffrage, was merely the adoption of a principle which the people had acted on, for half a century. The coloured people were not admitted into the ranks. The Constitution which provided for no such exclusion, had been violated in its spirit, in order to exclude the coloured race, and the people were satisfied. Where coloured people had been construed to mean citizens they were admitted ; where a different construction prevailed, they were excluded. He thought also that aliens ought not to be compelled to go into the ranks of the militia.

Some had said we ought not to proscribe aliens. This proposition did not proscribe them. If aliens choose to volunteer in the service, they could do so. But it seemed to him to be cruel to compel them to perform actual service, to coerce them to enter into the field against their own government to which they had given their allegiance. The government of Great Britain, did not recognize the right of expatriation; still if a British subject came into this country, and was naturalized, it would be the duty of this government to protect him. Until the act of naturalization, however, this government would not have the power to protect him. Therefore the exclusion of aliens could not be regarded as a stigma, or in any other light than that of a protection; because as the laws of nations treat those as traitors, who are taken in arms against their own country, aliens could not go into service on the same footing with citizens. The gentleman from the county of Philadelphia, had misunderstood his (Mr. R's.) amendment. It said that the militia should be enrolled at all times; it said nothing about organization. There was no prohibition in it against officering and organizing the militia when the Legislature should think it proper to do so. It said nothing on these points, but left the whole to the unrestricted discretion of the Legislature. There was a positive instruction that our militia should remain enrolled at all times. No one had any expectation that it would be necessary to call out the militia very soon; and this amendment would prevent the training of the people, and of the Friends also. The gentleman from Fayette, (Mr. Fuller,) had fallen into a mistake. He seemed to think that the people would be satisfied to dispense with the training of the militia altogether, until there should arise a chance of their being soon wanted in service. If the Legislature was not willing that it should be done, the amendment would have the effect of preventing any training in time of profound peace. The amendment of the gentleman from Fayette, ran thus, "Freemen of this Commonwealth shall be enrolled and organized, to be armed and disciplined for its defence as may be directed by law." The language here was very ambiguous. The language of the present Constitution read thus: "The freemen of the Commonwealth shall be armed and disciplined for its defence;" leaving it free for the Legislature to determine when they should be called into service. It ought to be understood as meaning, that they should be organized for service, "when they shall be required." That was the fair interpretation, and not the construction put on it by some that it went to authorize trainings against the wish of the people. The clause in the present Constitution was liable to the charge of ambiguity, and so was the amendment of the gentleman from Fayette. The amendment of the gentleman was as ambiguous as the clause in the present Constitution. It would not bear the construction that the people should be armed and disciplined at all times. The gentleman from Fayette, had so ingeniously worded his amendment as to make that which sanctioned his own peculiar views, the most plausible construction. Now he would ask that gentleman to look at the language, and see if it was not ambiguous, and if the most easy construction was not, that the freemen should be armed and disciplined in time of profound peace. There was another reason Mr. R. said, why his proposition was preferable to that of the gentleman from Fayette. It would have a greater tendency to satisfy those who asked for a change in this provision of the Constitution. In time of danger, or of actual invasion, we had never heard the Friends ask for any exemption. All they

had asked was, an exemption from what they deemed an oppression, in time of peace. This amendment which I (said Mr. R.) have offered, gets by the scruples of those who are conscientiously opposed to bearing arms. All they ask, all they wish, is to be relieved from an onerous or oppressive duty, in a time when there is no occasion for its exaction. Why then should we adopt an ambiguous proposition, when we can take one which goes to relieve this deserving and respectable class from an onerous duty. No gentleman has been asked to point out a single case where our militia musters have been productive of one solitary good.

Mr. Fuller expressed his regret that his proposition did not meet with the approbation of the gentleman from Susquehanna. The language of his proposition was excepted to. He had taken the pains to consult with members, of the committee, in order to have the words suited to make it discretionary with the Legislature to say how the trainings should be arranged, and also how frequently they should take place. He thought it would be so understood by the committee and by the gentleman from Susquehanna. "Freemen of this Commonwealth shall be enrolled and organized, to be armed and disciplined for its defence as may be directed by law." This language seemed to him to mean the very proposition which had been maintained by the gentleman from Susquehanna. The framers of the Constitution of the United States, viewed the militia of the several States as an arm of the greatest importance. That Constitution says: "A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." If it was then deemed necessary that the militia should be well regulated, such a militia could never exist under enrolment alone. Something more would be necessary to produce such an effectual regulation as would guard the liberties of a State. The time might come when there would exist a necessity to have a well regulated militia for the defence of our own State, and not for that of the United States. In such a case, would gentlemen like to have the militia in such a situation as that they could not be called on to do effectual service. This would place the United States in the awkward position of being compelled to call out the militia of the States. How could the militia be trusted to go into service if they were merely enrolled. In his opinion there ought to be full organization to infuse efficiency into the ranks. As to the objection which had been urged against frequent trainings of the militia, that they were productive of no earthly good, he thought that there resulted quite as much good from militia trainings, as from the trainings of volunteers. There had been for many years a constant influx of petitions to have the system broken down. If gentlemen would take the trouble to look back on the records, they would find petitions, first from one quarter of the State, and then from another. He believed that the organizing and keeping up of the militia would never be discouraged by the people; and if we did nothing further than to provide for the enrolment; he thought the people would put down the new Constitution, that they would not adopt the amendments. Organization was particularly mentioned in the Constitution, and why there should be a desire on the part of the committee to dispense with it, he was at a loss to know. If the whole system were to be abolished, he had no doubt that it would meet the approbation of the society of Friends; but it ought not to be disturbed merely for the

accommodation of any privileged class. From the remarks of the gentleman from Philadelphia county, (Mr. Brown,) that gentleman seemed to concur in the propriety of leaving out organization. Now that was the main thing. It properly belonged to the State to organize the militia, and the doing of this was in concurrence with the language of the Constitution of the United States, instead of being at variance with it. If the Constitution of the United States said "a well regulated militia" was necessary, he wished to be informed how any militia could be well regulated, without being organized.

Mr. PORTER, of Northampton, said that perhaps a reference to one or two authorities would have a tendency to rectify the opinions of gentlemen on this subject. In order therefore to enable us to come to correct conclusions on this subject, and to act understandingly in relation to it, it might be well to turn to the Constitution of the United States, article I. section 8. page 14, 15, and 16, as follows:

Congress shall have power

"To makes rules for the government and regulation of the land and naval forces:

"To provide for calling forth the militia, to execute the laws of the Union, suppress insurrections and repel invasion;"

"To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers; and the authority of training the militia according to the discipline prescribed by Congress:"

At the time the present Constitution of the Commonwealth of Pennsylvania was made, Congress had not exercised the power given by this clause of the Constitution; but two years afterwards, Congress did enact a law to give effect to this provision; and into this law the word "white" was introduced. The first section of this act of Congress of May, 1792, read thus, and the propriety of the provision leaving the organization to the discretion of the Legislature was by it made manifest.

"SECT. 1. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That each and every free able bodied white male citizen of the respective States, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years, (except as is hereinafter excepied,) shall severally and respectively be enrolled in the militia, by the captain or commanding officer of the company, within whose bounds such citizen shall reside, and that within twelve months after the passing of this act. And it shall at all times hereafter, be the duty of every such captain or commanding officer of a company, to enrol every such citizen, as aforesaid, and also those who shall from time to time, arrive at the age of eighteen years, or being of the age of eighteen years and under the age of forty-five years, (except as before excepted) shall prove to reside within his bounds: and shall without delay, notify such citizen of the said enrolment, by a proper non-commissioned officer of the company, by whom such notice may be served; that any citizen so enroled and notified, shall within six months thereafter, provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints and a knapsack, a pouch,

with a box therein to contain not less than twenty-four cartridges suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball: or with a good rifle, knapsack, shot pouch, and powder horn, twenty balls, suited to the bore of his rifle, and a quarter of a pound of powder, and shall appear, so armed, accoutred and provided, when called out to exercise, or into service, except that, when called out on company days to exercise only, he may appear without a knapsack. That the commissioned officers shall severally be armed with a sword or hanger and espontoon; and that from and after five years from the passage of this act, all muskets for arming the militia, as herein required, shall be of bores sufficient for balls of the eighteenth part of a pound and every citizen so enroled, and providing himself with the arms, ammunition and accoutrements required as aforesaid, shall hold the same exempted from all suits, distresses, executions or sales for debts, or for the payment of taxes."

Under this law the Legislature had acted. There was a manifest propriety in retaining the first words of the section; and perhaps the words "as the Legislature may direct," may be changed, so as to make it conform to the act more nearly. Thus the clause would not interfere with the act of Congress, and the Legislature could not Legislate so as to conflict with the action of Congress, if it were provided that the arming and disciplining should be done, as directed and provided for by law. He preferred the language of the Constitution as it now stood, with perhaps a slight modification, to either the amendment of the gentleman from Fayette, or the gentleman from Susquehanna.

Mr. Merrill said he did not see any thing to be gained by changing the word "freemen," to "citizens." How would the act stand then in reference to aliens. The law, a section of which had just been read, says who shall be liable to be enroled, and gentlemen, by adopting any other provision, would go contrary to the act of Congress. Would the gentleman preclude citizens of the state of New York, who had not a right to vote in this State, because they who have not a right to vote are not citizens. Yet such are required by the terms of the act of Congress to be enroled. The words of the report of the committee, he considered to be preferable to those of the amendment of the gentleman from Susquehanna. He had also another objection to that gentleman's amendment; he had given a list of occasions and times when the militia shall be called out, and that list was a defective one. He had said he would call them into service at a time of apprehended invasion or insurrection. That would not do. Such a provision as that would not leave any case of exigency. It might be necessary to call out the militia for the purpose of enforcing the revenue laws, and for the prevention of smuggling; and this could not be done if the list contained merely apprehended invasion and insurrection. There was the difficulty. He saw no reason for tying down the Legislature in this way. If an exigency occurred, they would call the militia into service and there was no necessity for calling them out, unless such exigency did arise. For himself, he would prefer to leave the arming, disciplining and officering the militia to the discretion of the Legislature, in the manner required by the terms of the act of Congress. To insert in our Constitution, what an act of Congress could annul, would be useless; and we could not by any provision in the Constitution, prevent the United States

from enforcing the act of Congress, and calling out the militia on the occurrence of any of the exigences specified, and any attempt to do so would be void. It would be better to adopt the report of the committee, and to reject both the amendments, and this would leave it at the discretion of the Legislature to adjust the mode of organizing the militia and carrying out the system. We had not the power to put any provision into the Constitution, which would be in violation of the laws of the United States. If we make a defective provision, the Legislature would not be able to act contrary to the terms of the act of Congress. Holding this opinion, he gave a preference to the amendment to the amendment, but was still more disposed to adopt the report of the committee.

Mr. FORWARD said he had no intention to make a speech on the subject. He had merely risen for the purpose of bringing to the view of the committee a single topic, relating to the attitude in which we stand in reference to the government of the Union. This point was one which could not be overlooked. There were reciprocal duties to which it was our duty to have reference in all we did. The people of the United States had not been silent on the subject of war. This State in its individual character had no power to declare war. That was a power vested in the United States, and it was left to the government of the United States to exercise it. The United States Constitution was explicit on this point; "Congress shall have power to declare war." "No State shall without the consent of the Congress, lay any imposts or duties, on imports or exports, except what may be absolutely necessary for executing its inspection laws" &c. "No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." We ought therefore to bear in mind that Congress has the exclusive right of declaring war and making peace. If the duty had devolved any where, it had devolved on Congress to declare war.

Congress then might make all the necessary arrangement on this subject; and, as citizens of Pennsylvania, we were subject to the action of Congress. What rights then have we over the matter? The right of appointing the officers of the militia when called into service. This is a power reserved to the States in this clause. There was no obligation on the States to act on the subject, till Congress should call upon them; nor in fact, even then; for the right of appointing the officers is included in the power of "organizing" the militia, and if the States do not exercise that power, the General Government may do it. The power to be exercised by the States was a specially reserved power. The question was what should be done by the State of Pennsylvania, under these circumstances? Let us look to our own duty. Was it requisite that we should in the fundamental law of Pennsylvania, provide for a militia system? No. All the power to be exercised by the State, could be exerted by the Legislature, as well without, as with such a provision. It was a State power, reserved in the Constitution of the United States, and could be exercised by the legislature when necessary. We might, therefore, strike out the whole clause, from the Constitution of the State, and leave the subject entirely to the Legislature. It was a mere matter of discretion to be determined by this Convention. He was not certain that it was expe-

dient to avail ourselves of this opportunity to provide that no man shall be compelled to perform militia duty in time of peace, though the militia system had been found more than useless. The remarks of the gentleman from Fayette, (Mr. Fuller,) on this point had struck him very forcibly. He doubted very much whether the people of Pennsylvania would respond to the wishes of this Convention in this regard, if there was a disposition here to dispense with all militia trainings, in time of peace. He was not, therefore, willing, as at present advised, to make that provision. As to the moral right of toleration, it would pain him till the latest hour of his his existence, if this Convention should expunge the clause securing it, from the Constitution. That provision was adopted in 1776, in time of war, and when an enemy profaned our soil. In 1790, it was again adopted in a modified form. It was a right which in 1776, was declared to be sacred—that no one having conscientious scruples, should be compelled to do military duty, upon the payment of an equivalent therefor. Upon that subject, when it came fairly and fully before the House, he should have something to say.

Mr. Martin said the whole question was now narrowed down to this point—whether in time of profound peace, the free citizens of this Commonwealth should be compelled to bear arms, and perform militia duty. It appeared to him that a vast majority of the free citizens of this Commonwealth were opposed to keeping up this system. When we had settled this important point, and decided according to the feelings of this Convention, and of the people, that no one should be compelled in time of peace, to do military duty, the remainder of the clause would be productive of little difficulty. If we examined the memorial presented to us by the Friends' society, we would find that they asked only to be relieved from that provision of the Constitution, which constituted them an exception to other classes of citizens. They said, in so many words, that the clause in the Constitution which made them an exception, though embodied for their relief, had eventuated in their oppression. This was true; and they therefore asked to be relieved from that provision or any similar one that might be substituted for it. This was all that they required. It was true that this clause would go to confirm the rights of conscience; but this was not the occasion to introduce that subject. We, said Mr. M. do not want it here. We do not wish to have it mentioned or alluded to, in connection with the organization of the militia. We complain that it has been improperly introduced into the Constitution.

As to the right of a man to freedom of conscience, it was not to be opposed nor brought into any doubt. He would not be under the necessity of going into the Bill of Rights for that. The object of the memorial, let me say, is to ask that we may not introduce any thing into our Constitution which will impair the rights of conscience in this respect. Now let us keep clear of it. The Constitution of the United States has a bearing, and ought to have a bearing upon the Constitution of Pennsylvania, and in relation to the militia, it should be our main object to keep in view, the provision of the federal Constitution. The whole subject of war and peace was committed to the federal government and there was the end of the matter. Should any enactment be put in our Constitution in relation to equipping and enrolling the militia, it

should be consistent with the Constitution of the United States. Now, sir, in regard to any provision on this subject, show me the man among the Friends who wishes to belong to a privileged class, or who asks to be placed in one. All we have got to do in the matter, is to keep clear of it. We have nothing to say in regard to the classes who shall or shall not perform military duty.

We are to decide simply whether the free citizens of the State are to be compelled to muster in the militia, and we shall have no difficulty in deciding that single point. He could not, he said, believe that it was the opinion of the majority here, that the provision heretofore adopted in regard to the establishment of a militia system, had been productive of any good effect. The whole system has been a failure. He could not believe that there was a majority here, who would say that the people should still be dragged to the militia musters, when and after fifty years trial, the musters had been found to be productive of no good, and of very great evil. Military men of experience have always told us that they preferred as recruits, soldiers who had never been mustered into the militia. They learn nothing there that can ever be useful to them in regular service, and they have to unlearn what they then acquire.—In this view of the subject, and believing as he did, that it was the object of a written Constitution to prevent the necessity of Legislation, and if possible, to place barriers beyond which we could not go; he thought our best and wisest course would be to provide that there shall be no military service required of citizens of the Commonwealth in time of peace. The duty of citizens in war might be left to the Constitution of the United States, and national legislation. If we should so frame our Constitution, as we could easily do, and still comply fully with the requisitions of the Constitution of the Union, as to declare that no free citizen of the Commonwealth shall be compelled to bear arms or pay an equivalent, in time of peace, and leave the whole matter to be arranged, as it ought to be in time of war, we shall have done all that is required of us.

By this course we not only prevent the necessity of legislating ourselves on the subject of the militia, but we gain all the objects required by the Constitution of the United States, and by the interests of the people of this Commonwealth. He cared but little whether the amendment of the gentleman from Fayette, or that of the gentleman from Susquehanna, was adopted, or whether the Constitution remained as it was. If we strike out the clause, as a majority have already agreed to do, then he hoped we should settle the point by providing that no man in time of peace, shall be troubled with the performance of militia duty. He was of opinion that the best way was to leave the Constitution as it is.

He was ready when the committee struck out the objectionable clause from the present Constitution, to leave the Constitution where it was, providing, only, that no one should be compelled to do military duty.—This whole objection to the existing Constitution was removed by the vote striking out that clause which, though intended to relieve the members of the society of friends, had, as they represented to us resulted in their oppression. That clause placed them in a very unpleasant position. They were made to appear as a privileged class, or being exempted for military service, while other people had to fight for them;

but yet they were subjected by the non-performance of the duty, to the most odious, fraudulent, and oppressive exactions, from the collectors of militia fines. This was a system which worked badly as to all citizens, but more in regard to the Friends than any other class. That clause respecting the Friends being removed, he was disposed to do very little more. All we had to do was to comply with the requisitions of the Constitution of the United States, and to leave the subject of peace and war to be regulated by it. The state of things in time of peace was as different from that in war, as was possible. How then in peace could we say what arrangements should be made in time of war. Every Legislature that undertook to make a military organization in time of peace for the purpose of war, must act blindfolded. When the war comes upon us, then we can always find the means to meet it, and men of proper character to conduct it. We had never found ourselves deficient in this respect. Why, then, was it necessary for us to say in the Constitution what should be done in time of war or invasion? We could not anticipate all the circumstances of the war, and it would be much safer for us to let the matter rest. There can never be a day of emergency in which there will not be men who can say promptly what ought to be done. The Constitution had very little to do with the affairs of war. Better would it be to settle by the Constitution, what shall be done in time of peace, and when we have done that, we shall have done all that is necessary. He would urge it upon gentlemen to abolish all compulsory training in peace. He was no soldier, and he believed there were but few here who were soldiers, though some there were who had high military titles. He did not believe that other gentlemen here, with all their professions, knew any more about the matter than he did. He would leave the subject by repeating that in his opinion, we should comply with the wishes of the people, on this subject, and with the requisition of the Constitution of the United States, if, omitting all reference to the society of Friends, we provide in the Constitution, that hereafter there shall be no trainings in time of peace.

Mr. SMYTH, of Centre, said he had a few remarks to make on this perplexing question. He had some objections to the amendment of the gentleman from Susquehanna, and he would show, in a few words, why he preferred the amendment of the gentleman from Fayette, to that of the gentleman from Susquehanna. The gentleman from Susquehanna, uses the word "citizens" so as to confine the provision to those who are not aliens, and this he does, because to muster an alien, would put him in danger of fighting against his own country. Now, when we knew that America was peopled with emigrants from Europe, and that it was not probable that we should ever be involved in war with all the powers of Europe at once, this restriction was unwise and unnecessary. Moreover, it had a tendency to degrade foreigners, by refusing to them the privilege of bearing arms in the service of the country. Suppose we were at war with Great Britian. Some of the aliens among us would be Spaniards, Germans, Poles, Frenchmen, &c., but all these would be prevented by this provision from taking any part in the war, and in the defence of the country. Besides, even if it was true that the alien was put in danger of suffering as a criminal, it was not a principle for us to recognize, because it was claimed by foreign governments. If a man

has property, he has a right to defend it. That was a doctrine which he held to be true, and that was the principle which we were bound to sustain. Another objection to the word "citizen," that it excluded the best soldiers, young men from eighteen to twenty-one. Until they were twenty-one they could not be citizens, but still they would be able and patriotic soldiers, and had a right to claim a part in the defence of their country. He would greatly prefer the word "freeman" to that of "citizen." It had been argued by gentlemen opposed to the militia system, that its expense was so great that it ought not to be kept up in time of peace. This was a strange doctrine. It was a stange thing to put dollars and cents in opposition to liberty in Pennylvania.

But will the system of compulsory militia training be so expensive as that of voluntary enrolments? You cannot, if you would, cut us off from the indulgence in patriotic feelings. The young men will form themselves into volunteer corps, if not enrolled in the militia, and the expense of the volunteer trainings will not be less than those of the militia. But the trainings were not expensive to the State. The salary of the brigade Inspector, is the principal source of expense.—They were certainly entitled to some compensation, and the office was a necessary one. Here was the greater part of the scare-crow objection of expense. But another objection to the system was that of inefficiency for the protection of the country from invasion. This objection was founded on mere incidents in the late war. The Governor of Vermont, it was said, in the late war with England, exerted his power to embarrass the operations of the militia. That Governor was hostile to the war, and when the patriotic volunteers of the State mustered into the service, he sent an order for them to return. But it was no good objection to the system that a Governor should be found who would throw his official weight against the patriotic exertions of his fellow-citizens. Very different was the experience of Pennsylvania in the late war. Not a hostile foot was set upon our soil, though the enemy's fleet was in sight of Erie. But he contended that it was idle to wait for the organization of a militia system, until an enemy was actually on our soil—until his cannon roared in our ears, and his bayonets flashed in our faces. In peace, prepare for war, was the maxim of common sense and of enlightened patriotism. He was opposed to both amendments, but would prefer the old clause in the Constitution.

The gentleman stated that a large majority of the Convention struck out the clause respecting those conscientiously scrupulous as to bearing arms. He was, nevertheless, opposed to that proceeding, and he hoped the majority would consent to restore that clause. One observation which fell from the gentleman from Allegheny, (Mr. Forward,) he would now notice. He understood the gentleman to say, that we ought to leave the right of organizing the militia to Congress alone; and he alleged that the Federal Government, by the Constitution, has the whole power over that subject. He differed from the gentleman in opinion as to this matter. The clause of the Constitution which provides "for organizing, arming, and disciplining the militia," only referred, in his opinion, to such portion of the militia as were called actually into service. The clause secures to the State authorities the appointment of all officers of the militia. The whole subject was not left to the National Government.

There must be in the Constitution of Pennsylvania some provision for the arming, organizing, and disciplining the militia, else they could not be enrolled and officered, and mustered into the service of the United States. The United States could call the militia into service to repel invasion, suppress insurrection, or to support the execution of the laws of the Union; but the States had the right to train them, and it was their duty to do it. Another objection made to the militia system was the immoralities said to be practiced at the trainings. Now he felt as much interest in preserving the morals of Pennsylvania as any one; but if we were to prevent the assembling of the people, on any occasion, for fear of immoralities, where should we be? The people sent us here to alter the Constitution, so as to give them more rights than they now enjoy; or rather to restore to them rights which the present Constitution deprived them of. The people want, among other things, more frequent opportunities of assembling together, to compare views on public affairs, to express their sentiments in regard to them, and to give instructions to their officers. Who did not know that immoralities prevailed to a great extent at the election; and no where more than at the election in the city and county of Philadelphia. He should be sorry if he thought they were practiced to such an extent in the interior. But did any body think of abolishing elections on account of the vices practiced at them? We must certainly do all that legislation can do for the moral culture and welfare of the people; but we cannot promote morality by abolishing public meetings of the people.

Another objection which gentlemen make, is, that no good can be shown to result from the militia trainings. He took the liberty of differing with gentlemen on this score. He took it that the militia trainings were of some service. He knew the system had great difficulties to contend with, in consequence of the prejudices of different persons against it, and this was not alone confined to Pennsylvania. He knew there were many wealthy persons who would pay a fine, rather than turn out in the militia, because they thought some disgrace might attach to them, in consequence, and those persons would use their influence to break up the system; but he hoped that they would be frustrated in their designs, and that the ancient and long established system might be kept up, and that the Legislature might pass such laws as to improve and better it. During the last war, when our frontier was invaded, the hardy yeomanry of our Commonwealth turned out in defence of their country, and did the State much good service. Many of our citizens, in the western part of the State, joined our fleet under the gallant Perry, and performed service in that victory on the lakes which aided so much in the successful termination of the last war; some of these, too, were aliens, if you please, who joined in and fought the battles of their adopted country, with as much spirit and patriotism as those who had been born upon her soil. He himself had procured from your department here a token of the bravery of some of those men. Then why should they be precluded from serving the country of their adoption? These men, however, were not all called out immediately from their homes without having any knowledge of military tactics. They were organized as militia at the time they were called upon, and had been disciplined, and were ready for the field immediately, as the people of the interior and western part of the State were always ready to turn out in defence of their country when in-

vaded. It might be that some persons in the eastern part of the Commonwealth were opposed to this militia system, but it was not the case with the people of the north western section of the State, where he resided. The gentleman from Susquehanna must himself think there is some necessity for training and disciplining the militia, because, in his amendment, he provides that in time of war, or threatened invasion, they shall be trained and disciplined. Then why not always keep them trained, because there is no knowing when they may be needed. They may be wanted at a time when none will be to be found, if the amendment of the gentleman from Susquehanna prevails. He desired the system of trainings to be kept up, for although so many winters had passed over his head that he could not be called upon by the laws of the land to defend his country, yet he felt as warm an interest in her soil as he ever had. He had turned out in times of need, but he did not pride himself on that, as he considered it the duty of every man to do so, when called upon. He might go on farther, but he would refrain from doing so at present, as he had said more than he intended when he arose; but with the gentleman from the county of Philadelphia, he thought the best plan would be to return to the provision in the old Constitution on this subject. In conclusion, he would say, that he would certainly submit cheerfully to whatever decision the majority of the Convention might come to, because he held to the doctrine that the majority should rule; but at the same time he hoped that the amendment proposed by the gentleman from Fayette might prevail.

Mr. M'Cahen said that the discussion was progressing as though the proposition made by his colleague, (Mr. Brown,) had not been agreed to; and it seemed to him that it would have been much more in order when that amendment was pending, than at present. He had voted for that proposition, and he had been gratified since to learn that that amendment was peculiarly acceptable, not only to the society of Friends, but to all other societies which had petitioned the Convention on this subject. He had voted for that amendment, however, not for the purpose of acceding to their wishes entirely, but was gratified to find that it had met their views. He voted for it because it was a partial exemption of a portion of the community from duties and obligations which he thought no citizen of the Commonwealth ought to be exempted from. He had listened to the arguments of the gentleman from Allegheny, (Mr. Forward,) with respect, so far as the conscientious scruples of a portion of our citizans were concerned; and he listened to the reading of the article of the Constitution of the United States, by that gentleman, with some attention, and he thought that if the gentleman had read a little farther, he would have found a proviso giving the States the right to organize militia corps for their own defence, and the defence of the country. In the amendments to the Constitution, article second, would be found the following words: "A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." It is there reserved to the people of every State the right to bear arms and organize a militia, and we do not entrench either upon the Constitution of the United States, or the laws of Congress, when we provide that the freemen of the State shall be enrolled and organized as militia. He was sorry to hear his colleague, (Mr. Martin,) say that the ociety of Friends had made a complaint which was nothing more than a

justifiable complaint of oppression and plunder. The laws of the State he believed protected the rights of every citizen of the Commonwealth. Then if these people have been plundered, they have the law for their redress. But if he understood the matter rightly, these people rebelled against the law. Instead of remaining good citizens, and acknowledging and obeying the laws, they chose to rebel against them, and therefore they have no right to claim the protection of the laws of the Commonwealth which they had set at defiance. The State of South Carolina had conscientious scruples about paying certain taxes in the form of duties levied by the General Government, and they rebelled against the laws of that government; but they were compelled to submit and obey the laws. This goes to prove that neither a State of the confederacy, nor an individual, had a right to set the laws at defiance. The doctrine that the supremacy of the laws must be maintained, is a good and wholesome doctrine, and every citizen of the Commonwealth ought to obey the mandates of the laws of the Commonwealth. If these people have been oppressed, the proper mode would have been for them to petition the Legislature, or this Convention, as they have now done for redress—obeying the laws of the Commonwealth in the mean time, and not to rebel against those laws, and refuse to submit to them until compelled to do so. It was not his intention now to go into a discussion of this matter of conscience, as it had been postponed until another time, and he should therefore pass over it for the present. In relation to militia trainings, he might say that he knew they had been great cause of excitement, but, as had been justly remarked by the gentleman from Centre, (Mr. Smyth,) this was produced by that spirit of hostility to the laws of the Commonwealth which was so much to be regretted. It was produced by attempts to ridicule and bring the laws of the country into discredit. They were produced by individuals who could not be looked upon as good citizens, because they refused to obey the laws of their country. Whether the militia organization of our State had produced good or evil results, he knew not. He left it to be determined by those who were familiar with the history of the late war, whether the militia of Pennsylvania and of the United States performed services in defence of their country, which entitled them to the regard of their countrymen. Those who are better acquainted with the history of those times, will know better how to rebuke the assertion that the militia are a disgrace to the country. Your volunteers are militia; they are all on the same footing; they all perform the same services to the State; and it would be contrary to our free institutions to abolish the system. He was opposed to this matter of paying an equivalent for personal service. Every man should stand ready to defend his rights and his property, and no one should shield himself behind the clause in relation to an equivalent, whereby he can produce the services of another in place of his own. He did not acknowledge this doctrine of employing a substitute as a sound one. Every man should be called upon to perform service to his country in the hour of need. Suppose you carry out this doctrine? Suppose in times of emergency every man should prefer paying an equivalent, or furnishing a substitute, instead of himself, where would you find those who would fight your battles? There was no equivalent for human life; and a man who chooses to pay a thousand dollars for a substitute, should not be permitted to do so, because it might be possible that he could make ten times that much in the performance of

his occupation at home—in the enjoyment of that ease and safety which others were stuggling to defend for him. As he had said before, he was pleased to find that the amendment of his colleague was acceptable to that portion of our citizens opposed to bearing arms; but he hoped the Legislature would pass no law exempting those persons from bearing arms in defence of the country in time of need. To hire men to fight the battles of our country, is in direct opposition to the spirit of our free institutions. It may perhaps answer the purpose in other countries, but in this country we should all be volunteers to fight in defence of our country,—our country's rights,—our free institutions,—our property,—our wives,—our children,—and all that we hold dear. These are the considerations which call us to the tented field, and these are the considerations which should make us all join in the inspiring language of the gentleman from the city of Philadelphia, (Judge Hopkinson,) in his national ode of

"Hail Columbia, happy land!"

And rally in defence of our national rights whenever they may be endangered.

Mr. FARRELLY considered the amendment of the gentleman from Fayette, (Mr. Fuller,) as more objectionable than the original clause in the Constitution itself. The people of the State are to be enrolled and organized and for what purpose? To be armed and disciplined. The amendment was making the injunction for disciplining them stronger than it is in the present Constitution. It was giving the strongest sanction to the ridiculous parades which the people were already troubled with, without the least advantage to the Commonwealth. The attempt to abolish this militia system, appeared to be looked upon by some gentlemen as an attempt to abolish a part of our system of government. Now he had a very great respect for the militia, and placed as much confidence in them as perhaps any gentleman here, and the best proof he could give of this fact to the militia of the Commonwealth, was to exert his humble efforts to relieve them from the disgraceful scenes they are now annually compelled to witness. He considered that in endeavoring to relieve them from the annual musters, he was showing much more profound respect for them than the gentlemen were, who were endeavoring to keep up the present system. For what purpose are the militia of the Commonwealth called out twice a year? He had heard of no advantage which was derived from it. In the country, it is well known, that it operated deleteriously on the morals of the community, and led to false notions of military discipline and subordination. So far from its introducing proper discipline or any thing like military subordination, it has directly the contrary effect. A want of subordination prevails, and an entire want of those principles of discipline which much fit men for military service. If it was necessary to give men military schooling, this is the worst school which they can be sent to. If persons tutored in such a school, were called upon to repel invasion in time of war, he took it that the schooling would be found to be of more disadvantage than advantage to them. One of the great disadvantages attending the present militia system, is, that the companies are not provided with competent officers. A large majority of the militia officers of our state are wholly incompetent to perform the duties required of military officers, and, in fact, competent men cannot

be found to accept the offices. If the nation was to be plunged suddenly into war with our present militia system in existence, it is almost certain that disaster and disgrace would attend our arms, for our militia officers as a body, are absolutely not qualified for their situations, and our militia could not receive the proper instruction until a new set of officers were provided for them. Our militia officers will always be of this character so long as the present system lasts, and we can only expect to make our militia valuable by abolishing the present system, and waiting until an emergency shall arise requiring the services of militia, and then provide good officers for them. In times of absolute necessity there is no doubt but proper and competent officers would be elected; but in times of profound peace all observation and experience tells us, that proper officers will not be elected. Another bad effect attending the election of militia officers under our present system, is, that it leads to the election of bad civil officers. Men elected to the offices of captains and colonels gain a certain degree of notoriety which is a stepping stone to civil offices and employments; and in consequence of this, men devoid of every qualification for civil employments, are frequently elected through this notoriety. This is a fact which cannot have escaped the observation of a single individual in the convention. He knew of a case of a recent election, where an individual came near being elected to the Senate of the State in consequence of this notoriety, who was certainly devoid of every qualification for that office. So long, however, as the present system is kept up, this influence will be exercised, and very much to the disadvantage of the people of the Commonwealth at large. He believed that to the fact of these militia offices being used as stepping stones to civil employment, was to be attributed the keeping up the present militia system to this time. If it had not been for this, he had no doubt but the system would long since have been abolished. If he wished to destroy the character of the militia of the country, to render them totally inefficient in time of war, to suppress the spirit of patriotism, inculcate false notions of military subordination, and unfit them totally for those high duties which they might be called upon to perform in times of need, he would keep up the present militia system. The ridicule to which the militia, as at present organized, are subjected, would be the surest means of making the country lose confidence in it, and unfitting it for the performance of every military duty. If, too, he was in favor of a standing army for the protection of the property of the people, he knew of no more certain means of effecting such an object, than by keeping up this militia system. When it would be put down by public scorn and public contempt, then ambitious and designing men might operate upon the people, perhaps by telling them that the militia system had failed, and that a standing army was necessary for the protection of their rights. Such might be the result, and such result is to be guarded against. If we wish, therefore, to save the character of the militia of the Commonwealth, and prevent the possibility of such an event, as the existence of a standing army in this country, the best and most effectual mode of preventing it, is to abolish the present militia system. In fact, the argument on which the system is supported, is the necessity of some particular sort of defence for the country, and it is generally advocated, as the only alternative between it and a standing army. It seems to be the substitute for a standing army. Now, he wished them to be placed upon the basis, that the existence of

a standing army was not required in this country. The system not only destroys the military spirit of the people of the country and subjects them to ridicule, but also subjects the people of the Commonwealth to a most onerous tax for keeping it up, and loss of time in attending trainings; and after all this, not an earthly benefit, not a single advantage is to be derived from it. On the contrary, it was productive of very great evils.— Now take the same tax and the same amount of labor, which is lost in attending these trainings, and place it upon the highways of the Commonwealth, and there would be less cause of complaint on the part of the people and a great benefit would result from it. Why, then, should this system be kept up when there is not the slightest advantage to be derived from it, and when there is not the least probability of a war. All the signs of the times indicate peace. The principle of peace is in the ascendent throughout the world and from every indication which we have, it will remain so for a long time to come; then, why the necessity of keeping up this parade which can be of no service either in peace or war. There was another objection to which he would advert, connected with the election of these militia officers. He believed the effect of this election of officers, would be, when called into the service, that the troops when drafted would be put under the command of officers, not of their election and perhaps not of their choice. The proper and true mode of avoiding this will be by postponing the election of officers until the militia are actually needed to repel invasion, or such other emergency as will make it necessary for them to be called out. With these remarks he would leave this subject, believing in the mean time that he could not show a more profound respect for the militia of the country than by endeavoring to relieve them from the ridicule which they were annually subjected to in attending their regular trainings.

Mr. Forward wished to say a word for the purpose of correcting a misconception of his remarks, by the gentleman from Centre (Mr. Smyth) He (Mr. F.) did not say that the Commonwealth of Pennsylvania had no right to organize her militia, or to provide for its organization. What he said, was, that Congress had the power to act upon the subject and provide a militia code; that it might set forth the manner in which the militia should be organized, and this would include a plan for the appointment of officers as a matter of course. He considered expressly that in the absence of such code the State might act, and it had so acted. He had not denied to any State in the Union the right of self-defence or State defence. He had adverted to the relations held by this Commonwealth to the National Government. He had spoken of its exclusive right to declare war, and, in speaking of that subject he had called particular attention to the word "national." He had said that the power to declare war, superinduced the duty of providing for it, and in this relation we were placed. By the compact of the Union, we were not bound to prepare for war or take one step in reference to that subject—he spoke of national war and of our duty to the Union—to the nation. He had said and he repeated it, that the State had the right to organize and arm her militia—he did not deny that right—the Commonwealth has a right to provide for her own defence. It is expressly provided in the Constitution of the United States, that the States may provide for their own defence in times of imminent danger. We are bound by that Constitution, and we have a right to defend ourselves in the way that is reserved in the Constitution of the United States;

that is left to every State in the Union, unrestricted and in full force. He knew that the people of the United States had reserved the right of self-defence; but the States have given up the right to keep ships of war or troops in time of peace. What he had said he took from the book, and he had not gone beyond that. The right of preparing for war is exclusively reserved to the Government of the United States, and the States cannot, for their own defence, keep ships of war or troops in time of peace. Now for the qualification of these remarks, he would refer to the amendment to the Constitution which had already been read as follows: "A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed." Why, this was intended to convey to individuals certain personal rights. This is a personal right reserved to individuals to bear arms; this was adopted to grant to every man the shield of self-defence. There is, however, another connection between the United States and the States bearing upon this subject. By one of the articles of the Constitution of the United States, it is stipulated that "the United States shall guarantee to every state in this Union a republican form of government, and *shall protect* each of them against invasion, and upon application of the Legislature or the Executive, (when the Legislature cannot be convened) against domestic violence." Thus, then, the burden of protecting each of the States of the Union from domestic violence, devolves upon the Government of the United States. This is another security on behalf of the States, and burden on the part of the General Government. Mr. F. had repeated but what he found in the book and he was surprised that he should have been misapprehended.

Mr. Smyth, of Centre, said, if the gentleman from Allegheny understood him, as saying that the gentleman was opposed to organizing and disciplining the militia, he had misunderstood him. His objection to what the gentleman said, was, as he understood him at that time to say, that Congress might provide for the appointment of officers for our militia. Now if the gentleman held to this doctrine he could not agree with him; because the Constitution of the United States reserved to the States respectively, the appointment of all militia officers. If the gentleman asserted that Congress had this right he must beg leave to differ with him and refer to the clause in the Constitution of the United States on the subject.

Mr. Scott, of Philadelphia city, said he rose to say a few words on the general subject now before the committee. In reference to the particular amendments which had been proposed, he did not feel it necessary to say much, because his own opinions were in favor of the old Constitution, with the single amendment made as to those having conscientious scruples; and his remarks, therefore, would apply with what little force they might possess, to any other amendment which might hereafter be offered, as well as that now before the committee. This Convention was about to frame a Constitution which, it was to be hoped, might endure as a basis on which the whole State was to grow up in strength and prosperity, for another half century to come. There was now in the State of Pennsylvania, a population of not less than one million and a half; and by the time another Convention should be called, that number might have increased to something like three millions of people. With this prospect

before them, the question in his mind was, whether, in laying the basis of a Government for such a people, to neglect that arm of the Government, which is generally designated the military arm, would be expedient or right; whether we were not bound to provide for the military defence of the people against all casualty by the proper internal organization of our militia, just as much as we were bound to provide for those branches of the Government which related to the administration of justice, or the civil department of the State. He apprehended that until mankind should alter; until their passions and feelings should be far different from those which actuated them now; until, in short, that period should arrive in the history of the world, contemplated as possible, he believed, only by visionaries and theorists—when all men should be allowed to retain the peaceful possession of their rights, and when all nations should be peaceable in point of practice—no well organized state, nation or government, would neglect to engraft on its fundamental law, some provision for the maintenance of her military arm of defence. And here he would beg leave to ask what the present Constitution of Pennsylvania asserted on this subject, with which we, her sons, ought to quarrel? The Constitution, in its present form, provided, in article 6, sec. 2, as follows:

"The freemen of this Commonwealth shall be armed and disciplined "for its defence. Those who conscientiously scruple to bear arms, "shall not be compelled to do so, but shall pay an equivalent for personal "service. The militia officers shall be appointed in such manner, and "for such time, as shall be directed by law."

"The freemen of this Commonwealth," repeated Mr. S., "shall be "armed and disciplined for its defence." He would again ask what there was in this short and beautiful sentence, calculated to excite any feelings with which the freemen of this Commonwealth ought to quarrel? Was it not right that the friends of the Commonwealth should, at some time and in some manner, be armed and disciplined for its defence? Why not? Because we had been told it was the duty of the General Government to protect us. The General Governmennt, however, had not protected us; it had entirely failed to do so heretofore, and it might fail again. Within twenty years we had had an enemy on our soil, in more parts than one; we had had the capitols of our States nearly occupied by them. One capitol had been entirely destroyed. Another had been within a few hours of absolute abandonment to the enemy, and our volunteers and militia had been slaughtered in its defence. We had had the enemy in every part of our country, and who could say that what had once happened, might not happen again? Who could raise the veil of futurity—who could look behind it and say that, in the course of fifty years, the same state of things might not again occur? The General Government could not be present at all times and in all places, to defend the country from invasion; and until we ceded to the General Government a power which never yet had been, and he believed never would be ceded to it—namely, a power to create a standing army equivalent to this defence—it would be useless to look up to it for entire protection and defence. The feeling of every American citizen was opposed to such a grant; it had been opposed by all the statesmen of our country, and we had been brought down to this single proposition that, as a permanent means of defence, we must depend on a well-armed and disciplined militia.

In Pennsylvania we had failed in some branches of this duty. We had not disciplined our militia well; and in some places they were made objects of ridicule. Such indeed was the truth. But was this the fault of the Constitution, or the laws under the Constitution? If it was the fault of the laws, let the Constitution stand, and let the laws be so amended as to meet the principle itself, which the Constitution contained. This would not be the only part of the Constitution which had been formed, and which had not for a long time been satisfactorily acted upon, although the action upon it had finally been made satisfactory. Look, said Mr. S. to that clause of our Constitution which provides for the creation of common schools! Was it not a dead letter on your statute book for forty years? Thousands on thousands of dollars were actually expended on the system of education, and were actually thrown away, until it became a subject of ridicule. And yet have you not within five or six years adopted a system, under that same Constitutional provision, which bids fair to rival that of any other State in the Union, and to make your people as enlightened as they are virtuous. Such is the state of the case as to education, and such may become the case as to the doctrine of national defence by means of a well disciplined militia.

But, Mr. Chairman, we have not always treated our militia in this way. Governor Snyder, in his message to both Houses of the Legislature of Pennsylvania, in the year of 1815-16, says: "During the late war, the "soil of this Commonwealth was never trodden by a hostile foot, yet "it had at one time a greater number of militia and volunteers in the service "of the United States, than were at any time in the field from any other "State in the Union. Our militia and volunteers were actually engaged "with the enemy in Canada, on Lake Erie, at Baltimore and elsewhere, "and stood ready to repel him from the States of New York and New "Jersey."

And, continued Mr. S., the Governor might have added the State of Pennsylvania.

I well remember the scene, to which reference has been made by the gentleman from Northampton, (Mr. Porter,) when large bodies of men assembled for the defence of the city of Philadelphia, some of them splendidly disciplined volunteers—some of them imperfectly disciplined militia, but all of them ready to defend the Capital of the State. Who that looks to the history of the transactions of that time at Baltimore; who that recollects the power of the British Navy then hovering on our coast—who that remembers the sudden fear into which the city of Philadelphia was thrown, will say that had it not been for the preparation and spirit manifested by the volunteers and militia, the city of Philadelphia itself might have fallen into the hands of the enemy? Who can say that, but for that preparation, the enemy might not have attacked Philadelphia as well as Baltimore and Washington? They might indeed have failed, but the knowledge that the city was prepared to meet the enemy, was enough to prevent the invasion; the very knowledge that there were stout and willing hearts ready to receive the enemy, should he advance, at the point of the bayonet, would act as a check upon him. I do not know but that such an event is going to occur again hereafter. I cannot tell whether, in fifty years from this time, we are to be twenty-four or only twelve United States, or a less or greater number. It is not given to us to raise the veil

of futurity. We cannot penetrate with human vision, the events of the next half century. It is impossible for us to say, whether succeeding generations will be called to resist foreign invasion, or will continue to be members of a great and consolidated nation. But of this I feel assured, that in all the vicissitudes of fortune, and amid all strifes—foreign and domestic—Pennsylvania, if to her natural and acquired wealth, to her unexcelled internal resources—to her mineral wealth, her internal navigation, her system of general education—she shall add a bold yeomanry, "armed and disciplined"—Pennsylvania will take her station upon a commanding eminence. Let it be remembered that the volunteer system is but a part of the militia system. If such is the case, this is a branch of the system which ought to be encouraged in the best mode possible, and I apprehend that that end will best be attained by upholding the other branches of the system also.

One branch of this provision required that the militia should be armed; and large sums of money had been expended by the Commonwealth for this purpose. Arsenals had been erected at various points—arms had been purchased—officers had been appointed—some progress had been made, and some steps had been taken, though probably not the best that could have been adopted; and if this feature of our Constitution was now abolished, it would be an abandonment of all that had hitherto been done—and the thirty or forty thousand men that had been armed under this system, and had stood ready to come forward at any moment for the public defence, would be dismissed without the possibility of calling them together again in any sudden emergency. We could neither procure men nor manufacture arms on an emergency. If we destroyed that which had been done, we should destroy the volunteer system; because by taking away their arms, we destroy also the martial spirit which they were sure to engender. It was true, as had been said, that the States were so jealous of the preservation of this martial spirit, that after they had adopted the Constitution of the United States, as it now stood, they were not satisfied until they had secured an amendment which provided "that the right of the people to keep and bear arms, shall not be infringed." If we destroyed the militia system, we did not indeed take away the right of the people to bear arms, but we destroyed the inclination, the habit of wearing arms; and such was not his sentiment as to what ought to be the condition of things in a country like ours. He believed that not only the right, but the habit of wearing arms was essential to freemen, and to the preservation of the liberty of freemen. This was the principle asserted in the Constitution of the United States; and if we did away with this, the effect would be to destroy the principle and the feeling together.

But there were other consequences to be considered as connected with the abandonment of the militia system; it might lead to the creation of standing armies in the various States of the Union, as had been intimated in the course of the debate by a gentleman on his left, (Mr. Farrelly;) and he (Mr. Scott,) had observed that the intimation had created a smile. He had listened to that suggestion with attention, although he did not concur in it. A standing army had, however, been asked for in the State of Pennsylvania, since the termination of the last war.

On reference to the Journals of the session of our Legislature in the year 1815 and '16, page 212-13, it would be found that a report was

made in the House of Representatives, by the committee on the militia, of which Mr. Sutherland was chairman, on a proposition for the creation of a select corps of fifteen thousand armed men in this State. The report commenced as follows:

"The committee on the militia system, fully aware of the numerous "difficulties that occur generally to the adoption of an efficient militia "law, have thought it an act of prudence to submit to the consideration "of the House, some of the most prominent features of a bill that they "contemplate introducing. The immediate and especial object of your "committee in submitting their ideas upon the bill for the organization and "equipment of a "select corps" of young men to defend the State, is to "ascertain, in as decided and unequivocal a manner as possible, the sense "of the House upon a bill of that nature. Your committee think it would "be a useless and unnecessary waste, both of time and money, to prepare "and report a bill, (which from its very nature must be a voluminous one,) "and afterwards have it rejected. They, therefore, think that this will "be an ample apology for recommending the following outlines of a bill, for "the adoption of this House:

"1st. The committee recommend the uniforming and equipping of "15,000 men, who shall parade one week in the month of each and every "year.

"2d. That the individuals to compose the select corps, shall be between "the ages of 18 and 28.

"3d. That the officers of the select corps, while in the service "of the State, shall be entitled to the same pay and rations as officers of "the same grade and rank in the service of the United States; and that each "non-commissioned officer and private, shall receive one dollar per "diem, for every day's attendance upon military duty, as assigned "by law.

"4th. That a tax shall be laid upon the citizens of this State, agreeably "to the county rates and levies, which tax shall be exclusively appropri-"ated for military purposes.

"5th. That the Executive of this Commonwealth shall appoint all the "officers that may be necessary for the officering of the select corps,"—and so forth.

He (Mr. Scott,) well remembered the course pursued on that occasion. He was a member of the House at that time, and he opposed the report for reasons which, in addition to those advanced by other gentlemen, were deemed sufficient, and the report of the committee was rejected. But there we found a project for the creation of a select body of men, to be armed and disciplined, formed and uniformed, and paid by the State; and to be governed by officers appointed by the Executive of the State. The good sense of the people rejected the proposition. But suppose we had just come out of a war in which, instead of being annoyed by a militia partly disciplined, we had been annoyed by the presence of no militia at all. Suppose that instead of presenting a front of some fifteen or twenty thousand men for the defence of the Capital of our State, we had presented none at all! What would have been the result of the report introduced by that committee in 1815? It would have been adopted, and we should have had a select corps of fifteen thousand men, raised, armed, disciplined and

paid by the State; and we should thus have had a *neucleus* on which to form a standing army in the State of Pennsylvania, with all its expenses and all its enormous and horrible results. He would not present to the Convention the danger of such a state of things hereafter; they could judge for themselves. The United States had never thought proper, had never condescended to carry into effect that portion of the powers given to them by the Constitution, which authorized the arming and disciplining of the militia. They had left it to the States for the reason, he presumed, that the States had a strong inclination themselves, to perform this duty. The same gentleman, from whose message he had before quoted, (Governor Snyder,) spoke in the following language:

"Experience has shown the futility of the idea of converting every "man into a soldier. An efficient defence must, in my judgment, be "sought in a select militia. Such a body, always organized, disciplin-"ed and well appointed, can, on any emergency, be promptly brought into "the field; and so long as freedom is appreciated, and patriotism inherited "from a brave ancestry, we shall never want abundant materials to form "such a force. To attain this desirable object, it would seem only "neceseary to aid and foster the spirit that animates our youth, by granting "immunities to those who shall enroll themselves in select corps to "serve such a period as may be fixed by law, holding forth to him who "honorably discharges his duty, future exemption from service—a liberal "remuneration for the uniform and accoutrements furnished by him, and "for the time he shall have spent in acquiring the art of war. It is well "observed, in the Farewell Address of the great and good Washington, "that "timely disbursements to prepare for danger, frequently prevent "greater disbursements to repel it." The whole male population between "certain ages, might be held in reserve, enrolled and mustered, perhaps "once a year,"—and so on.

Such, continued Mr. S. was the opinion of Gov. Snyder as to the mode of carrying out the principles of our Constitution; and the great point which he (Mr. S.) was desirous of pressing on the attention of the members of this body was, that the language of our Constitution was now competent to that mode. His objection was against interfering with this language so as to lessen the power of the Legislature; he would leave it to them to enroll, arm, discipline and embody the militia, as, and when they pleased. He knew that if there was no clause introduced into the Constitution in relation to the militia, the Legislature would not thereby be prevented from acting on the subject. He knew the principle to be that the Legislature had a right to legislate, in all modes, and upon all subjects where they were not specially prohibited by the Constitution from legislating; and he concurred, therefore, in the opinion that if nothing should be said in the Constitution, still the subject would be open to legislation. But we had heretofore thought this a matter of such grave importance, as to be worthy of direct and positive enumeration in our Constitution; to be put into that instrument, and to be brought, from time to time, to the attention of our legislative body. This course was thought necessary to the framers of the existing Constitution, and if we frittered away the language which they had inserted, it would be pointing out to the Legislatures that might hereafter come, the extent to which this Convention thought they ought to go, although it might not amount to a positive prohibition

of their action. On the whole view which he had taken of this question, under all the lights which he had been able to summon to his aid, he was of opinion that it would be better to leave this freeman-like provision of the existing Constitution entirely untouched—to leave the hands of our legislative body, unrestricted and untrammeled, and to leave it to them from time to time to fashion such a system as might hereafter accomplish that which we had heretofore failed to effect, in the same manner that our system of education had at last been brought into successful operation, although for a space of forty years, the provision in regard to it remained ineffectual and useless. With these views, and believing that we might safely rely, in this particular, on the wisdom of those who had gone before us, he intended to vote against all the amendments, except that which had been already adopted, leaving out those persons who entertained conscientious scruples against bearing arms.

Mr. SHELLITO said he was suffering under indisposition, and should not have said a word at this time, had it not been for some aspersions which had been thrown out against one of the most worthy citizens of our State. It had been said by his colleague, (Mr. Farrelly) that the individual alluded to, had used his commission as a militia officer, as a stepping stone to a high civil office for which he was totally unfit. He, (Mr. S.) denied that the gentleman was unfit for the office; there was not a more worthy citizen in the State of Pennsylvania. He repelled the odium which such language was calculated to throw on a large portion of the people whom he had the honor in part to represent. And whilst he was up, he would say a word on the subject immediately before the committee. He should not sanction, by his voice or vote, any proposition for abolishing the militia of our country. We must either defend ourselves by means of the militia, or we must resort to a standing army—a proposition which must strike with horror the mind of every freeman. He denied that it was the wish of the people to abolish the militia system; it ought not to be done, and so far as his influence could extend, it should not be done. The Convention might as well break up at once, and go home as make such an attempt. He looked upon the militia as the bulwark of our liberties; as a sure protection and defence in the time of danger. It had been said that we might rely with certainty on the volunteer corps; but he could not subscribe to that proposition. The militia and the volunteers were so dependent on each other, that the one, without the other, would fall to the ground; there would be no volunteers if there were no militia. And thus, when danger approached, the State of Pennsylvania would be left, like a silly dove, among her sister States, without the power to defend herself. Were we willing to defer all preparation to the last moment, in the belief that an army would spring up at our bidding the moment the enemy entered our doors, and was thundering against the walls of our Capitol? Nothing could be more unwise—nothing more absurd. We had been told that in seasons of peace we should make preparation for war; and time, which tested the philosophy of all principles, and the truth of all theories, had demonstrated the soundness of this doctrine. For what purpose were we fitting out the big ship at Philadelphia? Why were we putting her guns and all her armament on board? Was it not that she might be ready to defend us, if defence was necessary? We ought to be ready at all times, and on all occasions. The Constitution of our State provided that the "Governor shall be commander-in-chief of the militia,"

and if we now did away with the militia system, what becomes of this clause of our Constitution? We ought to cherish our militia by all the means in our power. Suppose there had been abuse of the system—that was no argument against the system itself. If the people were drilled with corn-stalks, as had been asserted here, they were still making some preparations. And if bad and inefficient officers had been elected, that was not the fault of the law, nor did it furnish any reason why it should be abolished. It had been argued on this floor, that the militia system was made a stepping-stone to civil office. What was there wrong or discreditable in this? Surely nothing. On the contrary, it merely demonstrated that those militia officers who were so fortunate as to be elected to civil appointments, were worthy recipients of the public confidence; for, if they were not so, if they behaved like dissolute men or vagabonds, the people would not suffer them to be their representatives in high places. The very selection showed that the man was a worthy and meritorious citizen, or that the people were fools. Was it consistent with human action to suppose that, because a man was a fool or a vagabond, therefore he should be raised higher in the scale of public estimation? We could not seriously entertain such an idea for a moment. In conclusion, he would express a hope that there would not be found a majority of this Convention who would be willing to give up the militia system, but that, on the contrary, they would uphold, cherish and strengthen it. The militia had acquitted themselves with honor, whenever they had been called into actual service. He trusted they would not now be abandoned.

[Mr. Biddle, of Philadelphia, made some remaks, a report of which was sent to him for revision, but, in consequence of the retention of the manuscript, the omission of the speech in its proper order has become unavoidable. If received, it will be published in an appendix.]

Mr. Chauncey, of the city, rose and said that he would ask the indulgence of the committee for a few minutes, while he stated the reasons upon which his mind was made up, and which would induce him to vote against the amendment of the gentleman from Fayette (Mr. Fuller,)—that of the gentleman from Susquehanna (Mr. Read,) and also against the report of the committee, as it now stood. He had gone back to the Constitution, and stood in admiration of those who framed it, and inserted the provision, which was at present, under discussion. He had satisfied himself well as to the reasons which influenced the framers of the Constitution—had well considered the subject, and felt quite content to rest upon the wisdom of that title. It would be borne in mind by the Convention, that the Constitution of Pennsylvania was formed shortly after the Constitution of the United States. He thought that the framers of our Constitution had bestowed much reflection and consideration upon the Constitution of the United States; that they had looked to see what were the rights reserved to the States under that instrument, and particularly in regard to this interesting subject. They had expressed their meaning and intentions in language peculiarly fortunate. The clause expressed all that was necessary to be stated; and after all, it left the subject precisely on the footing upon which the framers of the Constitution, after full deliberation, wished to leave it; that was to say that the Legislature

should exercise a certain discretionary power. He trusted that the Convention would have patience with him while he ran over the authorities in order to see how far our own Constitution harmonized with that of the United States, how far we were in the due execution of the authority which was reserved to the States, and how far, too, we should depart from that ground, which he regarded the legitimate ground—whether we should adopt the report of the committee or not. He thought all these things necessary to be noted here in reference to this subject. In the eighth section of the first article of the Constitution of the United States it is provided that Congress shall have the power of calling forth the militia, &c.

"Congress shall have power to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.

"To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of *the United States, reserving to the States respectively, the appointment* of the officers, and the authority of training the militia according to the discipline prescribed by Congress."

The terms of the Constitution he need not refer to; and the amendment now under discussion was simply an affirmance of a power—that the right of the people to keep and bear arms shall not be infringed. This provision of the Constitution gave to Congress a great power, and no doubt the framers of the Constitution of the United States, thought that this power could not be better exercised than by Congress. What was the provision in the Constitution? It would be seen that the power given to Congress was to "organize, arm, and discipline the militia," and that the rights reserved to the States were, the "appointment of the officers and the training of the militia, according to the discipline prescribed by Congress." How does the Constitution of Pennsylvania proceed? Why, it declared this general principle in the outset, that "the freemen of this Commonweath shall be armed and disciplined for its defence." It was an affirmance of the provision in the Constitution of the United States—in aid of that provision, and for the execution of the authority reserved to the States respectively by the Constitution. It provided that the militia officers should be appointed in such manner and for such time, as should be directed by law. He would ask, if there was any thing but perfect harmony and perfect unity between the Constitution of the United States and that of the State of Pennsylvania, the formation of which immediately followed that of the Constitution of the United States? Did not the people of Pennsylvania take up the idea of the reserved right. contained in this section, from the Constitution of the United States, and mean to exercise it by declaring, as they did declare, that "the freemen of this Commonwealth shall be armed and disciplined for its defence?" And, they did this in conformity with the provision in the Constitution of the United States, which asserts that "Congress shall have the power of organizing, arming, and disciplining the militia," &c. They availed themselves of the reservation made to the States, and accordingly inserted in the Constitution of Pennsylvania that "the militia officers shall be appointed in such manner, and for such time as shall be directed by law." What more than this was wanting? Did we want to go further than the

exercise of that authority which was reserved to all the States respectively by the Constitution of the United States? Did we want to do more than that? He would ask if there was any exigency, any emergency which called for the exercise of authority on the part of a State, as a State right, and which might be a questionable matter, as related to the Constitution of the United States? All that was required to be done, was already done by the Constitution. That Constitution (continued Mr. C.) provides that "the freemen of this Commonwealth shall be armed and disciplined for its defence. Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service." And, sir, it further declares that "the militia officers shall be appointed in such manner and for such time as shall be directed by law."

Let us then, sir, for a single moment, look at what are supposed to be the three propositions now before the committee as amendments to this provision in the Constitution. What says the committee?

"The freemen of this Commonwealth shall be armed, organized, and disciplined for its defence, when, and in such manner as the Legislature may hereafter by law direct, &c."

He (Mr Chauncey) would ask, if there existed any necessity for an alteration of the Constitution, for the purpose merely of introducing a change in the phraseology of the provision. The Constitution, as it now stood provided that the appointment of the officers should be as the law directs. He could see no good reason whatever for the proposed change. It could not be regarded as an amendment to the Constitution. What was the amendment of the chairman of the committee? The effect of it was to strike out the word "freemen," and to say that the citizens of the Commonwealth shall be enrolled, and in case of threatened invasion, or insurrection, shall be armed and disciplined for its defence. Did this relieve us from any supposed difficulty in the case? Who did the framers of the Constitution say were to be the judges of the exigency that should call for the exercise of that power? Surely the Legislature. And, who were to be the judges under the amendment of the gentleman from Susquehanna? Why, the Legislature. Then, there was nothing presented here in the shape of an amendment. We stand on the same ground. The power of a State could only be exercised by its legislative authority, and they knew best the time when it should be exercised. Would gentlemen go so far as to say that the Legislature ought not to be judges of our being threatened with an invasion, or insurrection? That was a time when the judgment of the Legislature should be exercised; and surely, under the existing Constitution, in precisely the same circumstances, and in the same contingency, must that judgment be had. He declared that he could see nothing in the proposition of the gentleman from Susquehanna which made an amendment to the Constitution. The amendment of the gentleman from Fayette (Mr. Fuller) was in these terms: "The freemen of this Commonwealth shall be enrolled and organized, to be armed and disciplined for its defence, as may be directed by law." Let us analyze this amendment. Did the mover of it mean that the freemen of this Commonwealth should be enrolled and organized, and be armed and disciplined for its defence, as may be directed by law? Because, if he did, ample provision was already made in the Constitution. Did he mean that they should be enrolled and organized? For that purpose, an

enactment of the Legislature was indispensably necessary: and afterwards, the judgment of the Legislature should be exercised as to the mode and manner in which they should be disciplined for its defence. Now, the mover of the amendment should bear in mind that inasmuch as this power was given to the Legislature by the Constitution, that very circumstance left them the right of exercising their judgment as to when a contingency should arise for calling out the militia, which was the object of the gentleman's amendment. Did the gentleman from Fayette mean that we should go beyond the terms of the provision contained in the Constitution of the United States, relative to arming and disciplining the militia? Did he wish to designate the exigency when the power should be exercised? Let the gentleman remember that Congress was to do that. We had examined our own Constitution, and seen that the framers of it had acted in perfect unison with the framers of the Constitution of the United States. There was, then, danger in departing from the proper authority —the Constitution of the United States. He had said nothing in relation to that part of the section reported by the committee, which related to the conscientious scruples of some of our citizens. He thought that there would be an opportunity hereafter for the further consideration of that subject:—he meant when the report of the committee, which proposed the introduction of an article into the Bill of Rights, should come up. He hoped, then, to be favored with an opportunity of showing that it was founded upon a proper basis—one unquestionably right, so far as it related not only to an exemption of those who entertained conscientious scruples against bearing arms, but also, to inflicting upon them a penalty for enjoying the rights of conscience. These were the reasons which induced him to vote against the amendment.

Mr. Fuller, of Fayette, said he perfectly concurred with the gentleman on his right, (Mr. Chauncey) that the provision in the present Constitution was all-sufficient in regard to organizing and disciplining the militia of the Commonwealth. But, in consequence of the suggestions of many of the members of the Convention, as well as citizens, he had been induced to offer his amendment, making a little change in the phraseology of the section. The Legislature alleged that they were not at liberty to abolish militia trainings, so much complained of by a large portion of our citizens. They said that they were constitutionally compelled to require them. In order to relieve and untie the hands of the Legislature, he desired to insert the word "when." He confessed that he was willing to adopt the provision in the old Constitution. He was not willing to leave the Legislature untied as to organizing the militia; but desired to leave them at liberty in this respect. He thought that the speech of the gentleman from the city, (Mr. Chandler) went to prove, most conclusively, the necessity of keeping up the militia system. With regard to the amendment to the amendment of the gentleman from Susquehanna, (Mr. Read,) his opinion was that it would meet the views of those gentlemen who desired to untie the hands of the Legislature, and not make it obligatory upon them to have the militia enrolled and disciplined. If he (Mr. F.) understood the language of the existing provision, it contained two separate and distinct ideas—the one obligatory, and the other could be dispensed with by the Legislature. As to the objections suggested by the gentleman from the city, (Mr. Biddle) in regard to the officering of the militia, he thought there was no force in them; for, when

the several companies of the militia were mustered into the service of the United States, the captain might be drafted, or not, as was thought proper. This was a matter to be regulated by a law of the States. The Constitution might be so amended as to provide that the person drafted should be elected captain. His view of the matter was that every citizen should retain the character of a citizen soldier.

Mr. INGERSOLL, of Philadelphia county, remarked, that if the amendment of the gentleman from Fayette, (Mr. Fuller) could be amended by striking the words "to be" out of the sentence "armed and disciplined by law," he would have no objection to it; but, if not, he should feel himself compelled to vote against it.

Mr. BIDDLE asked for the yeas and nays, and they were ordered.

Mr FULLER accepted the modification to strike out the words "to be."

Mr. MEREDITH, of the city, would briefly state the grounds of his objections to the amendment of the gentleman from Fayette, (Mr. Fuller.) His intention was to give his vote against the amendment to the amendment, and also against the amendment of the gentleman from Susquehanna, (Mr. Read,) and he would vote, finally, in favor of the amendments reported by the committee. The experience of the last few days had taught us, that the moment we departed from principle, we were involved in intricacy, and found it almost impossible to reconcile the various conflicting opinions which prevailed on the subjects brought under consideration. There was, however, one subject, upon which members generally seemed to agree—even his friend from the city, (Mr. Biddle,) appeared to admit that there should be some discretion left to be exercised by the Legislature in respect to this important matter. His colleague, (Mr. Chauncey,) who last addressed the committee, conceded, as he also believed had almost every gentleman who had spoken, that it should be left ultimately to the discretion of the Legislature. He found only an agreement, a unity of opinion as to the principle, distinctly laid down in the report of the committee, but a division of sentiment as regarded the details. Some of his friends seemed to think that the present mode of training the militia led to the cultivation of a spirit to bear arms. Here he must beg leave to dissent from that opinion. Indeed, in his humble judgment, it turned into ridicule the profession of bearing arms. His collegue, (Mr. Scott,) seemed to imagine that the principle with respect to this matter, might ultimately be carried out as in reference to common schools. He, (Mr. Meredith,) wished that he could agree with him. We knew that time was necessary to ensure military discipline; and that in a time of profound peace an opportunity presented itself of disciplining men for the field, which did not occur in a time of war. As to the conscientious scruples entertained by some men relative to bearing arms—that was a matter which he preferred should be left to the discretion of the Legislature. In his opinion, therefore, it would be better to have no provision in the Constitution, on the subject. He thought, then, as had been already suggested by the gentleman from the city, (Mr. Chauncey,) that the question should not be touched until the Bill of Rights came up for consideration. And if, at that time, it should be discovered that there was a decided majority, in favor of leaving it to the Legislature, he would give his assent to it. He

would abandon his grounds of objection, provided a step were gained by it. He could not take the old Constitution for the reason assigned by his highly respected and venerable colleague, who thought that the instrument as it now stood, left a discretion. He, (Mr. M.) was not prepared to say that the language of the Constitution bore out the argument contended for by the gentleman ; nor, would he maintain that it contained all that was necessary to give the Legislature discretion. The question had never been raised in Pennsylvania, whether the Constitution which called imperatively for the arming and disciplining of the militia, did not bind the Legislature to have that carried into execution, as well in a time of peace as of war. In his opinion, it did not. If his construction of the Constitution was wrong, or if there was any doubt as to its meaning, he would be willing to vote for having it so altered as to leave the matter of arming and disciplining the militia to the discretion of the Legislature. And, he would do so, because he felt impressed with the belief that the Convention desired the insertion of such a clause in the Constitution as would prevent all doubt on the subject for the future. He believed the Constitution perfectly intelligible as it now stood—that it contained a simple principle, leaving it to the discretion of the Legislature to say when the militia shall be armed and disciplined, and to point out the manner, and fix the time for which they shall serve. This he thought, would be as safe a mode as any that could be adopted. It was probable that many more amendments might be proposed, besides those at present under consideration, and that much more discussion might be elicited. However, the subject was one of great importance, and involved considerable difficulty, and therefore, was deserving of all the attention that the committee could bestow upon it. For his own part, he thought the better course to adopt, was to fix the principle only, and leave the details to the disposition and management of the Legislature. He would vote against the amendment to the amendment, and also the amendment, and in favor of the report of the committee, as amended.

Mr. Fuller, of Fayette, modified his motion by reinstating the words "to be," which he had moved to strike out.

Mr. Ingersoll, of Philadelphia county, remarked that it must be obvious to every member that ever since the commencement of the session, there had existed among gentlemen a considerable degree of frankness and cordiality, and that there had been, on this question, a good deal of profitable debate. He entertained no doubt that, in the course of the afternoon, or the evening, some means would be devised by gentlemen, to dispose of the subject under consideration, as speedily as possible. With this view, then, he would move that the committee rise to meet again to-morrow morning, when doubtless something would be effected.

Mr. Meredith, of the city, hoped he did not understand the gentleman as signifying that there had been too much debate.

Mr. Ingersoll. Not at all. Certainly not.

The question being taken on the committee rising,

A division was demanded—yeas 57—nays not counted.

The committee then rose, and the Convention adjourned till to-morrow morning.

TUESDAY, October 24.

SIXTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. Chambers in the chair, for the purpose of considering the report of the committee on the 6th article.

The question pending being on the motion of Mr. Fuller, to amend the amendment offered by Mr. Read, by striking therefrom all after the word "the," in the first line, and inserting in lieu thereof the words following, viz: "Freemen of this Commonwealth shall be enrolled and organized, to be armed and disciplined as may be directed by law."

Mr. Ingersoll said he would not have risen to take a part in this debate, if he did not flatter himself that he could throw a little light on the subject, in the present temper of the Convention. He could go to bed, and rise with thankfulness, that none of that party feeling which the former session had originated, remained in his breast. He would say that less good than ill had been said of the Convention, and in many cases, its individual, as well as its general character, had been implicated. He desired now to take up a few minutes, a very few minutes, and he would pledge himself not to go beyond that limit, and he would not have done this, if he did not feel that this was a subject of vital importance. One or two views which struck his mind with great force, and which had not been touched, he was anxious to present to the committee. With the feeling of an elder he rose,—not with the wisdom of one—for many of the junior members of the Convention, disgusted with the folly of the exhibitions, would discontinue the whole of the militia system; while two of the elder gentlemen in his eye—one with the gold spectacles, and the other with the silver ones,—and he knew no better way to designate them, doing it, as he did, with the most perfect respect - had spoken in favor of the system, as he intended himself to do. Let us not (said Mr. I.) be discouraged by the want of proper laws, or of a proper spirit in the people to carry those laws into effect. He felt himself standing on cardinal principles, when on the foundations of self-defence, and liberty of conscience. Many gentlemen had come to the Convention impressed with the importance of the judicial office, which he could not see to have been greatly overrated. He had his own opinions on this subject. Executive patronage was regarded by many others as a question of great importance, and some attached as much importance to that of the legislative power. There was also the subject of corporations, on which he had very innocently brought himself into trouble. But what were all these, to the great question involved in this section. So highly did he regard it, that he could not be able to excuse himself, if he did not say a single word. What is a militia? It meant neither more nor less than armed people. He did not intend to speak lightly of our holy religion, when he said that the right of conscience, which has been called an imperfect right, or the right to be exempted from military service, as tender consciences ought to be, where they properly

can, is only secondary to that great natural right, which is our birth right. Too old to fight himself, he did not wish to compel a worm that would not. A militia is an armed people: It is (said Mr. I.) that sovereignty to which we all bow—that sovereignty of arms. It comes from that great, just nation of antiquity, which continued for 600 or 700 years, without the advantage of your republican institutions, and subdued the world and infused her own character into those she subjugated. His friend over the way had never spoken better than he did on this subject, and he hoped that gentleman would help him to the lines of Sir William Jones in reference to it.

Our own ancestral country—not England only—but the British isles, Ireland, Scotland, &c. are distinguished for this principle. In France, until lately, only gentlemen were allowed to be armed; and even now it was death in Germany for a peasant to be caught with a fowling-piece; whereas, in England, Scotland and Ireland, all were armed. For did any one suppose the militia system meant nothing more than the art of shouldering a firelock, or performing an evolution? It meant more. It implied the use of the firelock and the sabre on all occasions. It placed it in the power of every one to make himself a man, capable, at all times, of defending himself against outrage and violence. When we speak of trainings, we speak of that which begins at the cottage fire-side. There is some self-training to be performed. He spoke of something earlier than the mustering of a corps, or marching in the field or by the tavern door, where a dozen persons assemble, and, in their sports, prepare themselves for the business of war; and while, with a quiet conscience and a gratified feeling, he was willing to accede to the wish for an exemption from pay, which would satisfy the more tender conscience—and he would be willing to go yet further to put their minds at ease—he could not but feel alarmed, lest this great institution, which had made England the first of modern, as it made Rome the first of ancient, nations, should be impaired, because some abuses had been discovered, and some contemptible proceedings had taken place. He begged the committee to be assured that he was not disposed or able to take up much time. Who fought the battles of Lexington, Bunker Hill and Saratoga? or, to come nearer our own times, who were they, also, at Plattsburg, that conquered the conquerors of Europe? Who saved Baltimore?—and he regretted to say that, if Baltimore had surrendered to the enemy, Philadelphia would not have even waited for a summons. The British troops would not have marched as far as the Susquehanna, before a messenger would have been with them, tendering the submission of Philadelphia. Who obtained the victory at New Orleans? These militia, trained and disciplined in their own houses; not practised in the field, but bringing the guns which they were taught to use when children. In these emergencies, not only to repel invasions, but to suppress insurrection, all classes, including even his friend behind him, (Mr. Cope,) would be ready to turn out; for did not 2000 young men turn out of Philadelphia for that purpose, a large proportion of whom were of Quaker lineage, their fathers and mothers being of that persuasion? This was a spirit which we ought to cultivate. He would ask the attention of the committee, for a single instant, to modern times. It was a fact, with which all perhaps were not cognizant, but it was not to be disputed, that your Bernadotts, your Soults, your Grouchys, those great generals, who carried the French power into all the Capitlas of Europe, but that

which was defended by militia—were all raised at the head of militia. The battles of Merengo and Waterloo, which, in poetry, present the most beautiful pictures of systematic skill, practically, as we had been told by those who were actually engaged in them, exhibited as much confusion and helter skelter, as we could meet with at any militia muster. That which, when its history shall be written, will present the most perfect plan, which the most comprehensive genius could devise and execute, may have partaken, and did partake, of the corn-stalk character. The battle of Merengo is known to have been gained in the most clumsy and incomprehensible manner. When the French army had been routed, Kellerman took it into his head, with about 600 straggling horse, to charge the pursuing troops, cut through them, and cut back, and thus turned the fortune of the day. The First Consul, who was at a distance, knew so little of what was going on, that he was doubtful for some time, to whom was due the merit of victory, such was the confusion which prevailed. A battle, therefore, as it would appear, was not so difficult an achievement for a militia. The raw initiant was just the same, perhaps it was better, in the militia. He had heard a distinguished gentleman of this State say, that there was no occasion for a militia, as, in case of emergency, we should have defenders hired. That was the principle of which he (Mr. I.) was afraid. It was a fact that no hired army ever conquered a militia. As he had before said, no French army had been able to reach the Capital of a militia country. These French armies, which were originally all militia, after marching to Madrid, to Berlin, to Vienna, to Warsaw—every where but London—were at last conquered by militia. The Landwehr, green militia, turned out against them at Waterloo. Never did Napoleon fight with more bravery than on that occasion. But the French had hired soldiers, and none others. In the first instance, as he conquered all Europe, at last all Europe conquered him, by the very means which we were now talking of. With a view to further illustration of the question, he hoped he would be permitted to read to the committee one or two passages. And he would first read a few passages from Blackstone, on the subject of the origin of the militia.

"It seems universally admitted by all historians, that King Alfred first settled a national militia in this kingdom, and by his prudent discipline made all the subjects of his dominions soldiers: But we are unfortunately left in the dark as to the particulars of this, his so celebrated regulation—though from what we last observed, the Dukes seem to have been left in possession of too large and independent a power, which enabled Duke Harold, on the death of Edward the Confessor, though a stranger to the royal blood, to mount, for a short space, the throne of this Kingdom, in prejudice of Edgar Athelrig, the rightful heir."

Blackstone then goes on to trace the origin of the military tenures, and then proceeds as follows:

"In this state, things continued till the repeal of the statutes of armour, in the reign of King James the first; after which, when King Charles the first had, during his northern expeditions, issued commissions of lieutenancy and created some military powers, which, having been long exercised, were thought to belong to the crown, it became a question in the long parliament, how far the power of the militia did inherently reside in the King—being now unsupported by any statute, and founded only upon

immemorial usage. This question, being agitated with great heat and resentment on both sides, became at length the immediate cause of the fatal rupture between the King and his parliament; the two houses not only denying this prerogative of the crown, the legality of which right perhaps might be somewhat doubtful—but also seizing into their own hands, the entire power of the militia, the illegality of which step, could never be any doubt at all.

"Soon after the restoration of King Charles the second, when the military tenures were abolished, it was thought proper to ascertain the power of the militia, to recognize the sole right of the crown to govern and command them, and to put the whole into a more regular method of military subordination, and the order in which the militia now stands by law, is principally built upon the statutes which were then enacted. It is true the two last of them are apparently repealed; but many of their provisions are re-enacted, with the addition of some new regulation, by the present militia laws,—the general scheme of which is to discipline a certain number of the inhabitants of every county, chosen by lot for three years, and officered by the lord lieutenant, the deputy lieutenant, and other principal land-holders, under a commission from the crown. They are not compelled to march out of their counties, unless in case of invasion or actual rebellion, nor in any case compelled to march out of the kingdom. They are to be exercised at stated times, and their discipline in general is liberal and easy; but, when ordered out into actual service, they are subject to the reins of martial law, as necessary to keep them in order. This is the constitutional security which our laws have provided for the public peace, and for protecting the realm against foreign or domestic violence, and which the statutes declare is essentially necessary to the safety and perpetuity of the kingdom."

Here, then, was to be attained the foundation of the whole. He would further direct the attention of the committee to the 29th chapter of the Federalist—to General Hamilton's discussion of the subject. When he said, at the beginning of his remarks, that he would throw a light on the subject, he meant to refer to this chapter. Any gentleman might read it for himself. He (Mr. I.) would not be so unreasonable as to tax the patience of the committee by reading this essay of one who was master of the subject, and had great military experience. This, then, was the system, and such was its operation in this State. He would ask the attention of the committee to the fifth section of the second chaper of the old Constitution—he meant the Constitution of 1776. "The freemen of this Commonwealth, and their sons, shall be trained and armed for its defence," &c. "And their sons." He knew an instance, and it deserved to be mentioned as an honorable distinction, of a gentleman at the battle of Baltimore, who had five sons in the service of his country—a gentleman who led the charge at the battle of the Cowpens, and put the regulars to flight—General Howard! The section goes on thus—"shall be trained and armed for its defence, under such regulations, restrictions and exceptions, as the General Assembly shall by law direct: preserving always to the people the right of electing their generals and all commissioned officers under that rank, in such manner, and as often as by the said law shall be directed." Here, then, every man,—whether native or naturalized, whether free or bond—for the provision comprehended every class and colour—every man capable of shouldering a musket, was required to be

trained and armed, by our present Constitution; and the amendment proposed to it, designates the militia as only to be for defence, and in this view Blackstone himself regarded the militia. The very second amendment to the Constitution of the United States, previous to which several of the States had refused to come into the compact, he begged to recommend to the attention of his friend from Allegheny, (Mr. Forward)—"a well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed." Mark the admirable adaption of the language. There is (said Mr. I.) an argument in it more than I could make in a year, all condensed. A well regulated right of every man, to do what? To bear arms—and the Constitution says this right to bear arms "shall not be infringed." This "well regulated militia," which is "necessary to the security of a free State," is the right of every man to bear arms, and it is a right which "shall not be infringed." And when his friend from Allegheny said at first, (as he had understood him,) that the federal power absorbed all the rights of the states on this subject, he (Mr. I.) confessed that he had felt himself excited almost to pugnacity. This right exceeded, was beyond the reach of the federal Constitution—it was supreme, above the supremacy of the Constitution—it was a right which the Constitution could not touch. It was nothing less than man's right to self-defence, that power which could not be impaired by any power of government. Towards the conclusion of the late war, when this government was struggling with immense difficulties, this State had her armies. At that time Mr. Biddle was a member of the Senate, and was the author of what was then called the conscription. He (Mr. I.) had voted for something like it, and he would do so again—and here he found the authority in the Constitution of the United States. "No State shall," &c. "or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." And who was to judge of this "imminent danger"? Why, the power of the State—and as this State was not then altogether in a state of acquiescence, of harmony with the General Government, there was danger lest the whole system of checks and balances should be destroyed at once. Here, then, is a state of right, belonging to that system which has been called, sometimes foolishly, he was ready to admit, but sometimes with great propriety, "State Rights," which no man would give away if he could, or could give away if he would. This he was free to acknowledge, having voted with a quiet conscience to strike out the clause. He was aware that the whole might be left out. In addition to what his friend with the gold spectacles—he meant the gentleman from Philadelphia, (Mr. Chauncey)—had very properly said, he was disposed to strengthen the views of that gentleman. What were we here for? He had come here under the impression—and he should continue so to act—that we have no popularity to consult. He was as fond of popularity as any gentleman; but he believed that the people were disposed to permit any member to vote as he might think best. If he but vote conscientiously, he will not be called to account by his constituents; his vote will not be allowed to stand in his way to public favor. This was a body above legislatures. He believed—and he knew it was ticklish ground for him to occupy—he believed we were above instructions, while he believed legislatures were open to instructions—which, as a celebrated statesman had said, sometimes paralyzes the action of a legislature. We all knew, for a thousand instances might be

referred to, that there were many well disposed and intelligent members, who approved of the principle that every man should vote as he thought proper. There was a friend of his, who was a stout-hearted soldier, who was not afraid to walk up to the cannon's mouth and be blown to pieces, if such were to be the result—who, whenever the ayes and noes were called, was always seized with a sudden trembling fit. We brought our duty here with us, and he was not sure that we ought not to put it into the organic law, that the Legislature should never be called upon to act on this subject. We have taken out the clause which relates to religious scruples. Did any one suppose that the Legislature would not be called upon to change, to modify the present system, and would not this hereafter prove a constant subject of difficulty and of embarrassment. He had felt all this at the moment when he gave his vote, but he had felt, at the same time, that there was only a choice of evils before him. He was willing to go as far as that, and to run all risk on the subject. All the fear he had was that they had not gone sufficiently into detail, and that for want of this we had laid the foundation of much confusion and discontent.

He would repeat what he had frequently said on this floor, and it was a principle upon which he had heretofore acted, and would continue to adhere to. His belief then was, that no man's popularity could suffer by any honest and independent vote which he might give in this body. Another principle which he contended for, and upon which he should act, and concerning which he had met with the opposition of many respectable members of the body, and that was that this Convention was not to stop when we had put in the Constitution what the people desired us to do, but were to incorporate in it whatever we might deem to be right; no matter whether the people contemplated it or not. And f r his own part, in this instance, he was inclined to believe that he should go further, and endeavor to get a clause incorporated in the Constitution which should have the effect of relieving the Legislature from acting on this embarrassing subject. Such was his notion of the matter, at all events. With respect to the toleration question, he had a word or two to say. He must deny that we were acting with a view to affect any religious body whatsoever. He thought that his friend from Philadelphia county, who had shown much zeal and anxiety on this subject, was entirely mistaken in his apprehensions. We were acting upon the principle of self defence, from a consideration of right, superiour to religious toleration. He would not vote with a view to any religious sect whatever. He had not risen to speak in a strain of adulation, or in terms of encomium of any religious body. He agreed entirely with what was said two or three days ago by a gentleman from the city of Philadelphia, (Mr. Chandler,) connected with a respectable press; that the principles of religious freedom, having been established by the founders of this Commonwealth, William Penn, and his immediate followers, we might almost be said to owe to them an exclusive privilege. And, if that privilege could be conferred on any body of men, and the principle justified by any certain standard, he would not hesitate to vote for it. It was a privilege, and he would vote for it as such. He would give to the society of Friends, as Williams did in the East, and the Earl of Baltimore in the South, religious freedom together with the principles of political liberty. We, however, could not do it, for there was no standard by which we could be governed. We could not tell who was a member of the society of

Friends. In making this remark, he begged not to be understood as making it in an offensive sense. But, he did suppose that there were members of that society within the sound of his voice who, respectively did not consider each other members of the society. There was no standard, except such as the Creator should make. No human eye could look into the consciences of men, and ascertain who had conscientious scruples. What else remained to be done? Why, all that we could do was to say that all persons having conscientious scruples shall be excused from military service, upon paying an equivalent therefor He would have no objection to grant this right to any person; to any old black woman, to any individual, for they were as much entitled to it as any society whatever. It was not a right which belonged to any individual in particular, but to every one who entertained conscientious scruples on the subject. He was told that this principle of toleration as respected the militia, was to be found, if not in the Constitution, at least in the laws of several of the States of the Union. He should under these impressions vote for keeping the old Constitution as it now was. His friend from Fayette, (Mr. Fuller,) was in favor of making it mandatory upon the Legislature, as it was in the Constitution. Any one who would carry out the principle of compulsory contribution should have his (Mr. Ingersoll's) vote; and any one who would devise a plan, by which the tender consciences of men—not any sect, for he knew of none—might be relieved and at the same time, be enabled to carry out this principle of arming the militia, should also have his vote.

Mr. Chandler, of Philadelphia, said, I rise, sir, with some diffidence at this stage of a protracted debate, sensible of the disadvantages of following and replying to so eloquent a speech as the committee has just listened to from the delegate from the county, (Mr. Ingersoll,) nor has it escaped my observation, that my respectable colleague (the President of the Convention,) has been taking notes, evidently with an intention of speaking to the question now under debate. Between two such entertainments I will only offer an interlude explanatory of the state of the question as it now is before the committee—an arid isthmus connecting two continents of flowers.

For some time, it has pleased those who advocate the amendment of the gentleman from Fayette, (Mr. Fuller) to overlook entirely the distinction which the opponents of coercive military discipline carefully make between the *volunteers* of our state, and the *enrolled militia* who muster upon compulsion, or pay a fine for non-appearance; and the eloquence of the gentleman from the county has been doubly dangerous, because he omitted to notice that distinction, and *seemed* to think that the volunteer companies of Pennsylvania were necessarily sharing in all that odium which justly attaches to the common militia, and which commends all legislative action in the cause of the latter, less to a military committee for arrangement than to the "committee on vice and immorality."

Throughout this debate, it has been the wish of the gentlemen with whom I have the honor to act, to promote such legislation as will effectually encourage the volunteer system of our State, while it shall defer at least, to the threatened invasion or open insurrection, the exercise of the power to call upon all to bear arms or furnish an equivalent.

Nothing can be more evident than the fact, that the involuntary militia

system of our State has outlived the affections and the respect of the people—that it has lost what appearance of usefulness it ever possessed, and is now a proper subject for excission by every rule of practical republicanism. The gentleman from the county has multiplied instances of the value and importance of a militia, and I will trespass on the patience of the committee for a few moments, to follow him in some, not only ancient, but "modern instances."

The gentleman, sir, refers us to the history of Rome as supplying a splendid example of the effect of an "armed and disciplined militia," formed of her own citizens, by which, *he says*, that nation was "enabled to conquer the surrounding people."

Sir, *conquest* is not the business or the armed citizens; the thought itself is unworthy a freeman. The republican knows his own rights, and takes arms to defend them; he recognizes the rights of others, and is most careful to respect them. The very charge of desiring to extend conquest and increase territory would be enough to call at once for disarming and disbanding a republican militia. When a European power *hinted* its purpose to assail a neighboring *republic*, on the south of our nation, President Monroe lost no time in responding, with a more significant hint, that if such motives actuated the foreign government, the United States could scarcely be an unconcerned or an inactive spectator. But, sir, let us look into the performances of this Roman *militia*, if indeed it was the militia of Rome that conquered the world. When the foreign conquest ceased, did this militia return to the field and the plough, and maintain the republic? Sir, Rome, by her armed cohorts, the militia of the gentlemen's argument, lost her republicanism; and at last the very army which had enslaved the world, as the gentleman boasts, turned upon its parent Rome herself, claimed for itself the right of sovereignty, and set up at auction, the diadem of the Cæsars, allowing the right of purchase only to successful warriors. So much for the *Roman militia*. The British militia, sir, is officered by the government to sustain itself against the people. The battle of Lexington is also quoted as an instance of the value of the militia. Why, sir, at that interesting portion of our national history, no militia existed. The Munroes and others at Lexington, who sprung from their ploughs and their gardens when the British had marched to secure or destroy the stores at Concord, were neither officers nor soldiers, though the facility with which they became both, when put with disciplined men, is a proof of the ground I occupy, that the kind of discipline proposed in the amendment cannot make a soldier, though I confess it may ruin the man. The gentleman has most feelingly referred to the successful defence of Baltimore, and expressed his opinion decidedly, that had Baltimore fallen, Philadelphia would at once have been in the hands of the enemy. Baltimore, sir, was not defended by the "militia," though many of that class of soldiery may have been among its defenders. The event is too recent and its history too well known, to need a more particular reference; but I cannot forbear noticing the remark that Philadelphia must necessarily have followed the fate of Baltimore. Those who retreated from that defeat, might have fallen back upon the resident soldiery of Philadelphia. The Capital of Pennsylvania would have been yielded only with the last breath of her natural defenders. "Quaker city," as she is called, she would have sustained those who would have defended their homes and

their children from the pollution of a foreign soldiery; and the instance furnished in the earlier stage of this debate by my colleague at my right, (Mr. Meredith) of a "Friend" assuming the command of a troop of horse during the revolution, is further proof that what by some is thought the weakness of the city, might prove her strength. Those distinguished by "peaceful pugnacity," might have held uncomfortable the assailants, while others with different views would have lessened their number. I have no doubt sir, that had the British soldiery ventured upon Philadelphia, in the vain calculation upon the character of her inhabitants, that its commander would soon have exclaimed, "save me from the '*Friends*,' and I will take care to escape from the enemy."

I have already said, sir, that I did not rise to make a speech; my object has been to place distinctly before the committee the views which I and some others entertain of the question now under consideration. We desire that the volunteer corps should be encouraged by all suitable appropriations and other available means, but that the State, as well as certain petitioners, may be spared the infliction of involuntary trainings or an *equivalent* tax.

Mr. Dunlop, of Franklin, wished to make a few remarks. It would be recollected that the committee to whom this subject was referred, made a report nearly in the language of the Constitution, that "the freemen of this Commonwealth shall be armed, organized, and disciplined for its defence;" except, that they added the words—"when and in such manner as the Legislature may hereafter by law direct," ending the section with the words, "Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service." He (Mr. D.) and his colleague the chairman, (Mr. Chambers,) had voted to strike out the latter clause, leaving the section to end with the sentence "when and in such manner as the Legislature shall hereafter direct." It had been over and over again, said, that the Legislature had considered itself bound to keep up militia trainings, in some form or other—no matter how ridiculous it might appear in practice to the great mass of the community. And, for the purpose of relieving the consciences of the members of the Legislature, in some measure, from that authority, the committee had reported the clause which he had just read—leaving the matter at their discretion. The chairman of the committee, from which the section was reported, (Mr. Read) moved to strike out the words "armed and disciplined for its defence;" and the gentleman from Fayette, (Mr. Fuller,) moved that the militia should be armed and disciplined as directed by law. He (Mr. Dunlop) had listened with much attention and pleasure to the remarks of gentlemen on this interesting subject, and he and his colleague, (Mr. Chambers,) had voted as they did, from a wish to relieve, as far as practicable, the consciences of those of our fellow citizens, in reference to this matter. He confessed, however, that after hearing all that had been said, and reflecting deeply on it, he had come to the conclusion that the better course would be, to leave the Constitution as it was originally. And, one of the grounds, which had not been fully considered during the debate, and which had brought him to this conclusion, was the character and object of the eighth section of the first article of the Constitution of the United States, enumerating the powers of Congress.

"All charges of war and all other expenses that shall be incurred for

the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States," &c.

He would ask whether this was an exclusive, or a concurrent power? Was it a power reserved to Congress only, or was it a power to be exercised by the States in connection with their other powers? And, have the States a right to legislate beyond what Congress has the right to legislate for them? This part of the Constitution of the United States was not altogether clear in its meaning, and might be considered as unsettled. The case of Houston and Moore could not be considered as decisively settling this point. Such was the importance of the case that the Legislature of Pennsylvania felt themselves called upon to pass a special law, to authorize it to be tried. It was carried to the Supreme Court of this State, and after long and able arguments had been heard, it was then argued in the Supreme Court of the United States, but such were the difficulties that presented themselves and the differences of opinion entertained by the Judges—that this part of the Constitution remained still unsettled. In these times, when men are so fond of taking the responsibility upon themselves, and of asserting that every man had a right to construe the Constitution as he understands it, some might be found ready to do so in this instance. He, however, held that no man has a right to give his construction after a legitimate authority had decided upon it. He thought that the manner in which the question, to which he had referred, was disposed of by the Supreme Court of the United States, left it open for further examination. What we had to decide was—whether the meaning of the clause in the Constitution was what it was supposed to be? Did it give a concurrent jurisdiction to the State? For, if it did not, then it did not become us to legislate on the subject, and every man who had sworn to obey the Constitution of the United States, must consider that as paramount authority. If, then, Congress has exclusive jurisdiction, in this respect, he held that in the Convention of a State, we should have no right to insert in the Constitution a clause conflicting with that power. He did not know where there was a more handsome or beautiful illustration of the duties to Government, than was contained in a report of Mr. Dallas, in 1814, when in Congress. That distinguished gentleman used this language:

"In the administration of human affairs there must be a period when discussion shall cease and decision shall become absolute. A diversity of opinion may honorably survive the contest, but upon the genuine principles of a representative government, the opinion of the majority can alone be carried into action. The judge who dissents from the majority of the bench, changes not his opinion, but performs his duty when he enforces the judgment of the court, although it is contrary to his own convictions. An oath to support the Constitution and the laws, is not therefore an oath to support them under all circumstances, according to the opinion of the individual who takes it, but, it is emphatically an oath to support them according to the interpretation of the legitimate authorities."

The tenth article of the amendments to the Constitution, says:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the United States, are reserved to the States respectively, or to the people."

Mr. D. remarked that there were two clauses in this article, 1st., "the powers not delegated to the United States by the Constitution; and secondly, "nor prohibited by it to the States." He would ask, if the powers over the militia were delegated to Congress? Why, most unquestionably they were—almost exclusively so. Congress has the right of arming and disciplining the militia, and the question was—whether that power was prohibited to the States? Was it reserved to the States? There might be reservations, or restrictions on the States, not directly expressed, but implied. What he would inquire, was reserved to the States by the Constitution of the United States? "The appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." The question was—whether this is a concurrent, or an exclusive power? It had been laid down that if Congress has a concurrent power with the States, and Congress does not exercise that power, the States may, but if Congress has, as far it can, the States are excluded. It was once affirmed that if Congress legislated on the subject at all, it took the whole power. A better construction would seem to have been put upon the power, in question, by Mr. Sergeant, Chancellor Kent, and Judge Story, who say that it only controls the authority of the States, so far as it may conflict with that granted to Congress by the Constitution of the United States. He (Mr. D.) was ready to acknowledge that to the extent to which Congress might exercise the power of arming and disciplining the militia, the States had no control over it. The question next to be considered was—how far has Congress exercised this power? There was an act passed in 1792, and which was still in force, requiring the organizing and arming of the militia. We found that Congress passed an act in 1803, and also one in 1815, on the same subject. We had no power to interfere with that which was the supreme law of the land. The act passed by Congress in 1792, would be found in Story's United States Laws, vol. 1. p. 252. What, he asked, was its language? It was—"that each and every free able bodied white male citizen of the respective States, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years, (except as is hereinafter excepted,) shall severally and respectively be enrolled in the militia by the captain or commanding officer of the company within whose bounds such citizen shall reside, and that within twelve months after the passing of this act. And, it shall, at all times hereafter be the duty of every such captain, or commanding officer of a company, to enrol every such citizen, as aforesaid, and also those who shall, from time to time, arrive at the age of eighteen years, or being of the age of eighteen years, and under the age of forty-five years, (except as before excepted) shall come to reside within his bounds," &c.

Now, whether it was a concurrent, or an exclusive power, was immaterial, for we have no authority over the matter; Congress having declared that each and every able bodied male white citizen, between the age of eighteen and forty-five, shall be not only enrolled, but shall provide himself with the weapons specified in the act of 1792. If we were now making a new Constitution, and were to insert in it a provision on this subject, which should come in collision with the Constitution of the United States, we might get into much difficulty, because we have no right to violate that sacred instrument. He would ask any gentleman who had sworn to obey the Constitution of the United States, if he would dare to

introduce a provision which would come in conflict with it? No conscientious man would think of doing such a thing— would dream of putting in the Constitution of Pennsylvania, a clause to exempt the Quakers, or any other sect, from the performance of militia duty. At the time the Constitution of this State went into operation, the Constitution of the United States had not been fully recognized by the several States. Congress closed their proceedings in September, 1787, and before the Convention of Pennsylvania had closed its proceedings. A year and nine month elapsed between the going into operation of the Constitution of the United States and that of the State of Pennsylvania. He would put it to gentlemen to say whether we should not be placed in an awkward position if, in forming a new Constitution, we were to insert in it a clause exempting a certain class of citizens from certain duties which the rest of the community were obliged to perform, and which exemption was contrary to the Constitution of the United States. It might be said, however, that we ought to establish such a Government as to enable us, under all changes and circumstances, to protect ourselves, without external aid, in the event of its being withdrawn at some future day. He would say that we had now no legitimate right to change or to alter the Constitution. If it contained any thing which was inconsistent with the Constitution of the United States, let it remain. We had no agency in putting it there; and had no right, therefore, to alter it. And, if we did, we should do so in direct contradiction of the Constitution of the United States, and of the act of 1792. He confessed that he would have been glad to have accommodated the Friends, and others who entertained conscientious scruples relative to bearing arms, by the insertion of a provision in the Constitution such as they could desire, but he really could not accede to their wishes for the reasons which he had already stated. He trusted that gentlemen who appealed to others to respect their conscientious scruples, would extend the same courtesy to those who had not the conscience to grant what was asked of them.

He hoped that the Friends and Mennonists would be exempted on account of their conscientious scruples, from personal service. All who were scrupulous on this score, might, without inconvenience, be exempted upon the payment of an equivalent. We could spare them all; for we had an abundance of men, and vast facilities for communication. We could now transport troops and munitions of war from the interior to the seaboard at the rate of thirty miles an hour. There were hundreds of thousands of men who would be ready and eager to rush into the field for the defence of the country. We need not look to the Friends and the Mennonists in the time of real danger; and we could easily frame our laws so as to save the consciences of all our fellow citizens, who felt any scruples in regard to bearing arms. He had voted for striking out the latter clause of the amendment reported, exempting the conscientiously scrupulous from personal service, upon the payment of an equivalent; but, if it were to go over again, he did not know that he should vote in the same way. But he was willing to exempt these persons upon the payment of an equivalent. The Mennonists had never refused to pay an equivalent, and all they wished, was to be exempted from actual and personal attendance at the militia musters; and they were perfectly content with the provision of the Constitution as it now stood. But, if this provision should be stricken out, then they would be left to the mercy of the Legislature, who

might withdraw from them the protection which they now enjoyed. The Friends stood in a different position in regard to this matter. Though willing to discharge all their civil duties strictly, fully, and promptly, they revolted from military service. They were good, liberal and public spirited citizens, and would discharge any duty imposed upon them which was not against their consciences; and it was against their consciences either personally to repel force by force or to aid others in the strife of arms, by paying an equivalent for personal service. Now, he would ask, was it right and proper for us, who represented a large body of Mennonists, to give our consent to the possible withdrawal from them of the protection from personal duty which they now enjoyed, by the payment of an equivalent. They would complain of such treatment and with great reason. The Mennonists, in his part of the State, were numerous, and they were sober, quiet, and industrious citizens. They had nothing to do with public affairs, and it was very difficult to prevail upon them even to exercise the right of suffrage, except at those times when they believe the bulwarks of the Constitution to be assailed, when they will come to its defence. This sect originated in Triesland in the year one thousand five hundred and fifty. Their great founder was Mennon, who was a man of piety and learning—of so great learning, that among his sect, he was considered as an oracle. His influence was very great in suppressing the ferocious and furious quarrels excited by the Anabaptists, and ultimately his principles spread very far through the country. At length, some portion of them, in consequence of religious persecution, came to this country, where they have always been esteemed useful, respectable and quiet citizens. They maintained the character of their founder, were quiet and industrious, and indifferent to every thing except the cultivation and display of the unobtrusive virtues of christianity. Would it be right to expose these men to the caprices of legislation, through which in a moment of alarm and excitement, they might be deprived of the freedom of conscience which they now enjoyed, whereas they now have a bulwark in the Constitution, which exempts them upon the payment of an equivalent, from bearing arms against their consciences. Why should any particular sect be exempted from the discharge of public duties? When men were by the operation of government, protected in their persons and property, it was going beyond the limits of moderation for them to ask that they should be relieved from their proper share of the burden of public defence, either by personal service or by the payment of an equivalent. It was said to be productive of great hardships and oppression to the society of Friends. But it was because they preferred to endure these hardships—to have their houses invaded—their property seized and sold—and their persons imprisoned, to the payment of the tax imposed by law as an equivalent for the service from which they were offered conditional exemption. If we should say that every man who conscientiously scruples to bear arms shall be exempted, and without the payment of any equivalent, where shall we stop? We shall, by such a provision, hold out a boon to the traitor and the convict, and afford them an opportunity upon a false pretext, to evade the performance of their duties as citizens. How many would say in reply to the summons of their country, I have married a wife, or I am building a house and cannot come. It must be left to their own conscience to determine whether they are sincere or not. You cannot, through any earthly tribunal, ascertain whether any

man has a conscientious scruple or not. Be he ever so profligate in his life, all he will have to do will be to say that he has a scruple of conscience. Suppose you tell him that his life contradicts his declaration, he can still say that his mind has been changed since he entered the door of the house where he is, and claim the benefit of the exemption. No period of time can be assigned within which the scruple shall be possessed, or a man's mind changed upon the subject. If no human tribunal can judge of his conscience you must take his word, you cannot even swear him, for he may have scruples against taking the oath. You might, in fact, as well tell your officer not to enrol any man who will allege any scruples of conscience, as to have a general provision for exemption. No men would be enrolled but those of a strict sense of honor and duty, and your troops would soon dwindle down to a remnant, like those of Gideon, though they would not be so effective. If we do not insist upon the payment of an equivalent, every fellow that chooses, may relieve himself of the duty by saying that he has scruples of conscience. We might just as well say at once, that every man who chooses may fight for his country, and that if he does not choose, he may let it alone. He would be very glad to accord all indulgence to the scruples of the Friends. As a class of citizens, they deserved the highest praise for their industry, economy, moderation and public spirit. They were at the head of all our works of benevolence, and to them we owed, in a great measure, the amelioration of our institutions and laws. He had warm friendships among them, and for all whom he had known he entertained the highest respect. But they must permit him to say that it is impossible to penetrate men's consciences and to draw a line of distinction between those who have sincere scruples and those who only affect to have them. Would it not be to grant an exclusive privilege to extend the exemption specially and exclusively to them? They were of this, and did not wish to have their name as a sect, specially mentioned. They wished to be relieved, and, at the same time, to have their denomination and their scruples left out of the question. We cannot, without granting an exclusive privilege, designate any particular society; and, if we make the exemption general, then we open the door for the escape of every coward and scoundrel who may wish to hold himself back from his country's service in the time of peril.

The Friends, as a society, notwithstanding their scruples, had, in the time of trial, furnished some of our bravest and most devoted soldiers. A large portion of them, too, although they did not, like Greene and Randolph, and Brown, draw the sword in the defence of the country, yet gave it the aid of their money and their countenance and their counsels. They had offered aid and comfort to the sick and wounded, to an almost unlimited extent, and had given as many gallant and true spirits, as any other class of our fellow citizens had done. He did not know whether they would look upon this as a compliment, but it would be so considered by the members of this body. Many of their officers and soldiers were highly distinguished for their daring and devotion. In Philadelphia, during the revolution, there was an entire regiment of them, called the Quaker regiment, and they took good care never to flinch, always conducting themselves with cool, quiet, and determined courage;

> "Firm proud and slow a gallant front they bore,
> Still as the breeze, resistless as the storm."

In regard to the militia as individuals, there was no complaint. No ridicule was intended to be cast upon them. The militia were composed of the people. They were our fathers, brothers and sons. Were they not, too, the sovereigns of the country, and did not Solomon tell us that we must not whisper a word against the king, for that a little bird would carry the report to him? But who has any respect for the system? Who believes that it makes good soldiers? Was it not a wretched system and wholly inadequate for its professed objects? A militia muster was certainly the last place in the world to learn the use of arms. How many corn-stock guns there might be in the cities he did not know, but there were a plenty of them to be seen at all the trainings in the country, and every muster was nothing but a burlesque of military array. As to the militia themselves, the dear fellows, they were our constituents; they sent us here, and might send us elsewhere, and were to be treated with the utmost respect. The gentleman from the county, therefore, eulogized his own constituents, when he spoke so well of the militia. He had told us of the battle of Plattsburg, and of the gallantry displayed by the militia there. But he did not say a word about the battle of the Thames and of the distinguished success of the volunteer mounted men in that action. At Plattsburg, there was not in fact any battle. On the first day, the militia could not be prevailed upon to stand. The historical account of the affair, stated that a corps was placed in front of the militia to encourage them, but the dear fellows notwithstanding that, took to their heels. But the next day, the British broke up their lines and resorted to their heels, whereupon, our militia stood very well. The year before this action, the gallant General Harrison, in the battle of the Thames, with his volunteer mounted riflemen, broke and routed a regiment of British troops. He was sorry the gentleman did not refer to that affair; for there might be use for the fact after a little time, and he would have been glad to carry home the gentleman's testimony with a view to do justice to a gallant soldier. Upon the whole, he (Mr. D.) would prefer to leave the Constitution as it now stood on this subject.

Mr. Ingersoll had not, he said, the books before him, but he had a perfect recollection of the events of the battle of Plattsburg. General M'Comb, who commanded on that occasion, was an intimate friend of his, and he had heard the events of the affair very circumstantially related. The militia on that occasion, did all that was expected from them. They were only required to stand on the defensive. The British however retreated, and they were, he believed, followed by our troops. He had omitted any notice of the battle of the Thames in his remarks, for the reason that the gentleman had alluded to, and he trusted that we should be relieved from the poor party jokes which were so common here at the last session. On the news of the battle of the Thames, he (Mr. I.) illuminated his house, and no man in the country felt a greater pride in that victory than he did. The present Vice President of the United States, Col. Johnson, who led the charge on that occasion, was his intimate friend, and he sat by him in Congress, at the time when he left his seat there to join the army. No man took greater interest than himself in that victory, but there were circumstances respecting it which induced him to let it alone.

Mr. Hopkinson did not rise, he said, to take any part in the debate on the subject, and he did not know where, in the wide range it had taken,

it would find any limit. He had risen to express a wish that the committee would arrive at some decision upon the question. General as the discussion had been, and great as had been the number of topics introduced, there were still, as it seemed to him, some few individual points as to which there would be no difference of opinion. Some gentlemen were in favor of extending the exemption now offered by the Constitution, and others were in favor of a more rigid enforcement of the militia system. But there were some few principles on which we could all agree, and thus we would be put in a way to arrive at some decision upon the question. These principles he would state. In the first place, it was the general opinion, he believed, that no unreasonable, burdensome, and vexatious duty should be imposed, by law, on the citizens, when it was not called for by the public interest. A wise and paternal government would impose no duty on a citizen which would be a grievance and a burden to him and make no adequate return to the Commonwealth. That was one step in this question; and another was that the trainings of the militia, as now conducted, and had heretofore existed, were a vexatious burden upon the citizens, and were productive of no possible good to any body. Was not this principle correct? Did any one here say that these straggling militia training tended to promote a knowledge of military affairs, or to make any man a soldier? Then were these trainings, as they have existed and still exist, of no possible utility, while at the same time, they were a source of vexation, cruelty and outrage to our fellow citizens. But it is said this is the fault of the system. He did not say anything against the militia. He viewed them with respect, kindness and regard,—for they were our fathers, sons and brothers. All the complaints were of the system. But it was asked, can we not get a better system? Had we not attempted it from time to time, and had we advanced one step towards a better system in forty years? It was universally admitted that we made no soldiers by it. We could not make them, but in one way, which was proposed in Governor Snyder's administration, and which every one revolted at. He took it as a truth, then, confirmed by experience, that we must keep the militia system as we have got it, or give it up. He had then established two principles; first, that it was not the part of a good governm nt to impose any vexatious and uncalled for duties upon the citizens; and second, that our militia system is of no use whatever. He held it as another principle that, in time of peace, when militia are of no use, even if they would be at any time, their trainings might be dispensed with; but, when danger threatens, then every man of whatever sect, ought to be obedient to his duty as a citizen, and be ready to defend his country and himself, and his property. He would not stand at the door of a man, to defend his house, when the owner was in the house, exempt from exposure to personal hazard and duty, and employed, perhaps, in packing up his plate, and preparing for his escape. In time of danger, every man was bound to contribute to the safety of the country, in one way or another, either by personal service or by the payment of an equivalent. Then, he would ask, did not the amendment, as amended, on motion of the gentleman from Philadelphia county, cover all these principles? It called up, en masse, all the citizens to defend the country when defence was required. How does it do it? It does not, indeed, go into details. It was utterly impossible for us to anticipate and provide for

every contingency that might occur. Such provision might be safely left to the Legislature—to the representatives of the people of Pennsylvania.

The Legislature, heretofore, had been willing to dispense with the militia trainings, but they felt bound, by the imperative injunction of the Constitution, to carry the provisions into effect, and to keep them up. This was their sole objection to the discontinuance, if he was correctly informed. We were to judge, then, as to the expediency of retaining this imperative provision. Shall we keep the Legislature under this imperative order, or shall we cut them loose from it? That was the question. We could not look forward for forty years, and tell every act, in reference to the defence of the country, that might, in that course of time, be required of them; but the legislative body itself, at the time and on the spot, could decide what should be done. His friend and colleague, (Mr. Scott,) whose opinion had great weight with him, and for whose learning he had the greatest respect, had opposed the amendment on the ground that it was identical, in effect, with the provisions of the present Constitution. Good reasons, Mr. H. thought, had been shown for a change of the Consititution in this particular; and his colleague, with all his learning and ingenuity, could not prove that the Constitution now left it to the discretion of the Legislature to continue or dispense with the militia trainings. We know, in fact, that the Legislature had adopted a different construction of the Constitution. Our opinion, what it might be, of the proper construction of the instrument, would have but little weight with them He wished to adopt an amendment which would make certain what was left uncertain, and would leave to the Legislature a discretionary power over the subject. We saw here a great difference of opinion as to the real intent and object of the Constitutional provision. One member was in favor of the Constitution, as it stood, because it was imperative in its injunction upon the Legislature to organize and discipline the militia; and another was in favor of it, because, in his opinion, it was not thus imperative. Was it not proper then to settle this question, even if merely considered as a question of construction? Having fixed upon the principles, it would be easy to settle all the details. The great question for us to decide was, whether we would leave the subject at large, to the entire discretion of the Legislature, or whether we would continue them under an imperative order in relation to it. He would like to see a vote taken which would test the sense of the Convention on this point.

Mr. Stevens would, he said, make a few remarks in explanation of his views of the subject and of the vote he should give. He agreed with the gentleman from Philadelphia, (Mr. Hopkinson,) in all his sentiments on this subject; but it seemed to him that his object was not to be gained in the way that he proposed. He would not leave it in the power of the Legislature to vex and burden the citizens in time of peace, unnecessarily; but he would agree that, in times of real danger, no one should claim any exemption from the duty belonging to all good citizens. He had prepared an amendment which he intended to offer in case that which was under consideration should be rejected. [Mr. Stevens read an amendment providing, in substance, that no citizen should be compelled to bear arms in time of peace, but that, in time of war, every citizen

capable of bearing arms, should be compelled to perform military duty, or pay an equivalent therefor.]

Now sir, if you leave the report of the committee as it stands excepting the amendment of the gentleman from the county of Philadelphia, (Mr. Brown) which is agreed to, the present militia system will be in full force, and the Legislature will have power to make those who are conscientious about bearing arms, pay an equivalent, in the shape of a fine, and you may depend upon it that the Legislature will make no change in relation to this system on any account. He had seen the subject frequently brought before the Legislature, and he seldom saw the Constitution brought in question. The question of policy—the question of expediency was the only question which was taken into account. If we did not abolish militia trainings in time of peace, depend upon it the Legislature never will. He was therefore in favor of putting in the Constitution the imperative exemption of all those who have conscientious scruples against bearing arms, from doing so in times of peace, or the paying of an equivalent for the same; and he was for leaving them subject to the Legislature and the laws to be prepared when the enemy was at the door, or when invasion threatened the land. He thought none could complain of this. He believed the present militia system to be a farce, and it will continue to be a farce so long as it is organized as it is at present. Although the militia is composed of respectable men, he must say that they were contemptible soldiers. He felt no hesitation in saying this. He cast no reproach upon the men, but merely upon the system which produced the most wretched insubordination and want of discipline. Respectable citizens attend the trainings, but they meet for fun and frolic; therefore there is no reason why those persons who do not desire to enact these ridiculous scenes should be subjected to pay a fine, or an equivalent. No public duty requires that such a state of organization should be kept up by compulsory means, and as there are some who have conscientious scruples, he would therefore insert in the Constitution a clause entirely exempting them both from attending or paying an equivalent; and he did not care how many of our citizens availed themselves of this privilege in time of peace. Even if it extended to one half, so much the better, because those who did then turn out would do so for the pure love of performing military duty, and they would perhaps do credit to the system, instead of disgracing it. But while he would do this, he would take away that part of the Constitution which went to exempt any man in time of war from defending his country. Every man should be ready to take up arms in defence of his country and his country's rights, when her institutions were endangered by a foreign or domestic foe. He therefore hoped that the amendment of the gentleman from Fayette, and the amendment of the gentleman from Susquehanna, might both be negatived, so that he might have the opportunity of introducing the proposition which he had brought to the notice of the committee.

Mr. Bell said, he presumed that the gentleman who had just taken his seat, was not present a day or two since, when he (Mr. B.) announced it as his intention, in case the amendments now pending were negatived, to move an amendment almost in the same words of that brought to the notice of the committee by the gentleman from Adams. He agreed with

that gentleman entirely in the view taken of this question, and was pleased to hear that he would have the powerful aid of that gentleman, knowing as he did his own inability to do the subject justice. While he was up he would give some reasons for the vote he was about to give, which had not yet been brought before the body, otherwise he should not have troubled it on the subject. There were three questions which seemed to be presented for discussion and decision, and each of them highly important The first was, shall the Legislature of Pennsylvania, which is the immediate representative of the people of this Commonwealth, be restricted on a subject so momentous as the military defence of the country? In the second place shall we impose an imperative command upon the Legislature to do that which their good sense would forbid them from doing? And thirdly, shall we leave them to act so far as they may deem proper in relation to the conscientious scruples of a portion of our citizens? Now with regard to the first question, shall we make it imperative on the Legislature not to exempt any person, but to call upon all citizens, to enact once or twice a year a scene which has been very properly denominated a ridiculous farce? We have heard it argued by some gentleman, that under the present Constitution, the Legislature have the power to abolish the militia trainings, and the militia organization. We have heard from the gentleman from Adams, that when the Legislature was called upon to abolish this disgraceful system, that they did not refer to the constitutional obligation upon them, but put it upon the ground of policy, of expediency. That to be sure might have been the grounds taken by some gentlemen; but we all know it is a part of the history of the Commonwealth, and the journals, the arguments, the debates will show it, that in the Pennsylvania Legislature, many members placed their convictions against abolishing the system upon constitutional grounds—upon the clause we are now discussing and proposing to amend, and upon it, because they looked upon it as imperative, leaving to them no discretion whatever; and upon reference, to the minutes of the Convention of 1790, page 258, will be found the strongest grounds for this view of the case. There we find that when the section "the freemen of this Commonwealth shall be armed and disciplined for its defence," was under consideration, a motion was made by Mr. Roberts, seconded by Mr. Shoemaker, to strike out after the word "Commonwealth," the word "*shall*," and insert in lieu thereof the word "*may*," which motion was determined in the negative. This amendment it appears was negatived without debate and without a division; therefore there is very good grounds for looking upon the clause as being imperative. At any rate there is room for doubt as to whether it was intended to leave any discretion in the Legislature. Then what were we assembled for? Simply to introduce amendments. No sir—we came here also to remove obscurities, to remove doubts. It is our bounden duty to remove all doubts, by introducing language which will give every clause a clear and explicit meaning, so that nothing may be left to construction. So much for that part of the subject. Now it has been agreed by some gentlemen that although evils innumerable have been practised under the militia laws of this Commonwealth, based upon the Constitution of 1790, yet the system must be kept up, because if you destroy these militia trainings, you at once destroy the volunteer system, which is the protection of our State in all times of danger; and as an argument in support of this, we have been

pointed to the gallant exploits of our volunteer militia on several occasions. He knew there had been a gallant band of volunteers mustered on the southern frontier of our State, in whose ranks was then to be found a gentleman from the city of Philadelphia, now in his eye, but he would appeal to that gentleman, or any other gentleman, to say whether the old, miserable corrupt militia system of the State had been the means of aiding in the formation of that corps. No sir—it owed its existence to no such system; but it owed its existence to the patriotic feeling which aroused the young and the ardent of the city of Philadelphia. He might say to the patriotic spirit which pervaded some of the school boys of that city, because in the ranks of that corps was to be found at least one patriotic school boy, who, although barely rising sixteen, threw away his books, and rose superior to the militia system, and all the enjoyments of his home and the comforts of a domestic fireside, took up arms in defence of his country, and marched to meet the enemies of his country. A gentleman on yesterday had pointed the Convention to the fact, and delineated with what patriotic ardour our volunteers rushed to the defence of their country during the late war. Sir, Pennsylvanians need not at any time to be coerced to become volunteers in the day of trial. During the last war they rushed to the relief of their country, and rallied around her standard, without owing it to any militia to coerce them, or fit them for the service. He thought he had shown briefly that it was not owing to the militia system during the last war, that the volunteers of our State were ready immediately to take the field, and it was not now owing to the militia system that volunteer corps were in existence. But what will be the result of dispensing entirely with the system; he spoke of it now as connected with the volunteer system. In other words—what will be the result of adopting the amendment proposed by the gentleman from Susquehanna, (Mr. Read) and dispensing altogether with the organizing of troops for the defence of the country in time of peace? Why, it will be the total destruction of the volunteer system. Are we then ready to introduce into the fundamental law of the land, a clause that will lead to the destruction of the whole volunteer corps in the Commonwealth? He trusted not. What was our condition during the last war? We were without soldiers and without officers. The government was compelled to call into her service the superanuated officers of the revolutionary war, and what was the consequence? Defeat and disaster attended our arms, and the most promising of our citizens were cut off, because of the inefficiency of the officers of our army. This he knew, because young as he was, and imperfect as his recollection was of events at that period, yet he recollected that there was but oue volunteer company in the city of Philadelphia before the war. His friend from the county of Philadelphia (Mr. Ingersoll) shook his head at this, but, he would tell the gentleman, at all events, volunteer companies were few and far between. He spoke of the time immediately preceding the war. Well, what was the result of this state of things? Why, as he said before, defeat attended our arms in the offstart. All our institutions are opposed to the keeping up of a standing army, and where are we to look for the preservation of our liberties? Why, to our volunteer corps. There is to be found the school of the soldier, and to no other school can he go, because it is the most ridiculous farce to send men to militia musters to learn military tactics. Then it is of the utmost importance to preserve these volunteer

corps as a nucleus around which to assemble the whole mass of the people in cases of great emergency. Every gentleman must agree with him that we should not take any step that would have the effect of destroying this part of the military of our country. The Legislature should not be compelled so to act on this subject as to utterly destroy the only military force known to our State. It will be recollected that the subject of placing the volunteers of our Commonwealth on a more favorable footing, has engrossed the attention of the most enlightened portion of the people of Pennsylvania, and it had produced the assembling of a military convention at this place some few years ago. He (Mr. B.) was not present himself, but he knew many very intelligent gentlemen who were present, who were persons that had commanded volunteer troops, and had much experience in the matter; and that convention recommended to the Legislature a system which he believed to be the only practicable system of keeping up a body of troops in time of peace. Their recommendation was, the establishment of volunteer corps to be paid by the State, for all the time they loose in the service of the State. Now would the gentleman from Susquehanna by his amendment prevent the Legislature from doing any thing like this? He would leave the Legislature free to act as they might see fit and proper. For these reasons he would vote for the report of the committee, leaving it to the Legislature to adopt such a system as to them may seem most proper. The volunteer system must become most popular, and he was sorry to see that the volunteer and militia system was connected together. Was he to be told at this day, that a Legislature cannot be found to obey the will of their constituents on this subject? As to the will of the people of the State on this question, he thought there could be but little doubt. He thought there could be but one opinion on this subject, in the east especially, and he trusted in the west also; and he thought when we unloose the hands of the Legislature, we may expect a very favorable change. For these reasons, without at present going into the constitutional question read by the gentleman from Franklin, (Mr. Dunlop,) he felt bound to vote against the pending amendments, and in favor of the report of the committee as amended by the gentleman from Philadelphia, reserving to himself the privilege of moving the amendment he had heretofore brought to the notice of the committee, when he should have the opportunity to do so.

Mr. Brown, of the county of Philadelphia, should not have risen to say a word, had it not been for the remarks of the gentleman from Adams (Mr. Stevens.) He should now vote for the amendment of the gentleman from Fayette. In the first place, he thought that it would be the best plan to leave the whole matter to the Legislature, but upon further reflection, he had come to the conclusion that the better system would be to enrol and organize the militia, leaving to the Legislature the discretionary power of arming and equipping them. From the past experience which we have had on this subject, it has been found that the Legislature were indisposed to do away with the militia trainings. What object the Legislature had in view, he knew not; but it had been seen that they were indisposed to abolishing the system, and he thought the better plan now was to leave to the people themselves to say, through their immediate representatives, whether they were disposed to do away with military trainings in time of peace. He thought in trusting this power to the people, and to the Legislature through them, we run no

risk whatever, as it was not to be supposed for a moment that the Legislature would neglect to arm the militia when the United States or the State, might require their services. He had strong reasons to believe, without imputing any improper motives, that the Legislature would not do away with militia trainings, if the provision was left as in the old Constitution; and he was, therefore, in favor of placing over them an injunction in the Constitution, to do away with them, and leave the matter with the people. He was not even for saying that they should be kept up in times of exigencies, leaving it to the Legislature to say when the exigencies should arise that required it, giving their reasons for it. He was entirely opposed to having any distinction in classes, either made by the Constitution or the Legislature. In times of trial, he wished every class to be called on alike. He wished every class to stand on the same footing, and have all subject to be called into service, in defence of the State, when it was necessary. If it was necessary to call out the armed citizen for defence, let every man be subject to be called upon; and if it was required by the State, that men should receive a training of two or more days in the year, let all be called upon to perform that service to the State. We are all protected equally by the laws and the government, and we should all bear the burdens of the government equally. He would relieve no man, or no class of men, from any duty required to be performed by the government. He would not, for a moment, think of giving a vote that would justify the suspicion, or lead to the danger, which was to be apprehended from allowing conscientious scruples to interfere with the duties which the citizen owed to the State. He would not, in times of profound peace, allow any citizen to be exempt from the performance of duties which were required of him by the government. If these duties are not required of us in times of peace, let us all be exempt from them; but when it is required of the citizen to arm in defence of his country, then let it be imperative upon every man in the Commonwealth; at least so many of them as the people, in their Legislative capacity, shall require. He thought the question raised by his colleague, (Mr. Ingersoll,) in relation to the right of the citizen to bear arms, had very little to do with this question. There was a vast difference between the right of the citizen to bear arms, and dragging them through streets, or across fields, some with and some without arms, merely to render themselves ridiculous. The man is no better fitted to use his arms after he has performed service in the militia trainings, than he was before he attended them; and if there had been no others at Plattsburg and Baltimore, than those who had received these militia trainings, the enemy had less to apprehend from the use of those arms, than those who held them. There was a great difference between the present time, and the period when the Constitution of the United States and of this State were adopted. It may be well enough for the citizens of the southern and western States to keep and bear arms. It was necessary in this State at one time for every man to take his arms into the field with him when he went to his plough, but what citizen would think of doing this now? It would be a ridiculous thing for him to do so, and it would be just as ridiculous for the Commonwealth of Pennsylvania to keep herself armed to the teeth, when not the slightest danger is to be apprehended. The military training has brought disgrace upon the system without being productive of any good results. It may be true that some valuable officers have sprung from militia officers but at

the same time it has brought into the field men to command who are unfit to obey—men who are unfit for private soldiers, yet who are made to command regiments and brigades, some of whom have been elected for the very purpose of burlesque. There was not the slightest use in these militia trainings, for the purpose of keeping up the military spirit, or for any other purpose, because the citizens of this country will always defend it when it is invaded. If you go to Bunker Hill, to Plattsburg, or to Orleans, you will see that the citizen will always be ready to defend his rights. If you go to Europe, you will find that the Tyrolese fought as bravely against their country's enemies, when their soil was invaded, as any soldiers ever fought. It was time enough, however, to call our citizens into service, when our soil is invaded—unless we can show clearly that we do prepare them for service, by the militia trainings which we have. These trainings were a very great burden to the people, which he was willing to relieve them from, if they desired it, and with this view, he would leave the matter to the Legislature to be regulated as they saw most proper. In relation to the section in the United States' Constitution, that the freemen shall be armed for the defence of the country, which had been brought to the notice of the committee by his colleague, in an imperative sense, he must say that he begged leave to differ with his colleague as to the construction to be placed upon this clause. He took it for granted that they were to be armed when defence was necessary—when their services were necessary. He did not look upon it that the freemen of the Commonwealth should be armed for defence, when no defence was necessary. He took the clause as meaning that we should not enlist a standing army of soldiers for defence, but that the freemen should be armed for defence, and that only, when defence was needed. He would take away the injunction upon the Legislature to keep up these militia trainings; or he would go further, and say, that they should not bring the militia system into ridicule, merely for the sake of according military distinctions to certain persons; but he would also take from the Legislature the power to relieve any of our citizens from aiding in bearing the burdens of the State in times of need. He would, therefore, vote for such a proposition as he had indicated, in the best language in which it could be prepared.

Mr. Sergeant said he understood the gentleman from the county of Philadelphia, (Mr. Brown) to say that he would vote for the amendment of the gentleman from Fayette, (Mr. Fuller.) Now in his opinion that amendment went quite as far if not farther than the Constitution of 1790. It was as follows: "The freemen of this Commonwealth shall be enrolled and organized, *to be* armed and disciplined for its defence as may be directed by law." It appeared to him that this amendment led to the same conclusion that is supposed to have been arrived at by the Legislature, heretofore, under the Constitntion of 1790. The Constitution says "the freemen of this Commonwealth shall be armed and disciplined for its defence," and the amendment of the gentleman from Fayette, says "they shall be enrolled and organized, to be armed and disciplined for its pefence as may be directed by law," so that they amount to very nearly the same thing. As the enrolment appeared only to be with a view to their being armed and disciplined, he could not see that the people would be any better off, if indeed they would not be worse off, than under the existing Constitution. He was therefore opposed to the amendment,

and while up he would say a few words on the subject, not, however, intending to detain the committee many minutes.

There are two provisions in the Constitution of 1790, the fate of which has been very singular. The first was to be found in the second section of the sixth article which says "that the freemen of the Commonwealth shall be armed and disciplined for its defence." The other was to be found in the first section of the seventh article in the following words: "The Legislature shall as soon as conveniently may be, provide by law, for the establishment of schools throughout the State, in such manner that the poor may be taught gratis." The one is a direction to the Legislature to make preparation for a state of war, and the other is equally imperative in directing them to make preparation for that which will be beneficial to all mankind in peace as well as in war. Now if you will look at the regular messages and addresses of the different Governors of Pennsylvania, you will find that these two matters have been the leading topics in nearly all of them; and in reality they have been subjects of deliberation in the Legislature, more or less, at different times. But the militia system has had the best fortune of the two, for there has always been a militia law except in the year 1814, when it was most wanted, and then it did so happen that there was no militia law in existence. The subject of education, however, which was equally provided for in the Constitution, and which was equally imperative with that clause which relates to the militia, has been until quite lately, entirely lost sight of, and neglected, and no provision made for it. Although, there was no doubt about the propriety of a school system, it was utterly neglected by the Legislature, while the militia, which was becoming more and more doubtful every day, was steadily kept up. For some cause or other, they thought proper to maintain the system, as they called it, such as it was. The volunteers of this State, who were the only troops deserving the name of soldiers belonging to it, have given the final death blow to the militia, and the militia can never recover unless the volunteer system is entirely destroyed.

This perhaps may not be so perceptible in the interior of the State, but in the city of Philadelphia and the neighboring counties, the contrast is such between the volunteer corps, and what is called the militia, as to not only disparage the militia in the eyes of spectators, but also to be offensive to those who serve in the militia. Here was to be seen on one side the straggling militia without uniform and often without arms, and on the other, a body of fine looking young men, and gallant spirits who would, whether disciplined or not, do duty in actual service. When these troops were called out during the memorable year 1814, all that was felt in regard to them was the apprehension that so fine a body of young men might be lost by exposing themselves too much; we had many fine volunteer corps at North Point, at the entrenchments near Baltimore, and at Bladensburg. At the latter place there was a regiment of volunteers, which to be sure were designated as militia, and very possibly this was the regiment in which the five brothers were; but it was made up of such men that it was with difficulty they could be induced to obey the order to retreat, and the commander of the British troops himself, who was acquainted with the character of this regiment, and knew that it was made up of the finest youths of Baltimore, felt concerned lest he should, as he said himself, have to let loose his blackguards on them. That officer

who fell at North Point, and whose death perhaps saved the effusion of much blood, had the generosity to say at Bladensburg, that he was glad to see this regiment get out of his way, lest he should have to set his fellows upon them. The gentleman from Chester, (Mr. Bell) supposes the existence of volunteers in this State and the United States to be recent. This is a mistake. There was a curious fact on record in relation to the volunteer system of which he should speak in another point of view. There were volunteer corps nearly as long as fifty years ago, and these volunteers, and sometimes the militia, were commanded by men who had served in the revolution. The first company that was raised in Philadelphia, was commanded by a man who had been a captain in the war of the revolution, and another company which was raised afterwards, was commanded by a gentleman who was a colonel. But there was one remarkable fact in relation to the volunteers which could not be affirmed as to militia, and that was that they were generally to be found in numbers proportioned to the exigencies of the times. For example: in 1794, there was a call made by the General Government for troops, to march to the west to suppress the western insurrection. Immediately, from a company called M'Pherson's Blues, in the city of Philadelphia, there sprung up a regiment. Again, in 1798, when we had the difficulty with France, M'Pherson's Blues again entered the service, and were augmented and increased, and another regiment added to them; and, at the same time, a legion was raised commanded by General Shaw. All these were volunteers. The last war, too, increased the number of volunteers. Then what comparison is there between the volunteers and militia? Can you look to a platoon of militia, in time of danger, with that confidence which you place in an equal number of volunteers? Or can you give them that instruction which the gallant, chivalrous spirit of the young volunteer possesses? Do you believe or does any man here believe, that any part of the military accomplishments of any one man in a platoon of volunteers or regulars arose from his having been enrolled in the militia? I mean this; do you think that a man who has advanced one single step towards military attainments, has acquired those attainments by service in the militia? In other words, if you were going to form a volunteer corps, would you ever enquire whether a man who proposed to enter it had, or had not, been at the militia trainings? If he had been there his whole life long, and every year during his life, you might raise a doubt whether he was fit for a soldier, but you never could entertain the idea that he was better qualified on that account, for such an office. If this is the fact, what is the consequence? He is not fit for war, and not fit to be a soldier in time of peace; and if the performance of militia duty does not qualify him to become a member of a volunteer corps, to march along side of a platoon and go through requisite exercises, surely it does not qualify him for service in active war. Now, take a man who has been at a militia training and instead of a corn-stalk, give him a musket, and place him along side a platoon of volunteers. Do you believe that he would be able to keep time, or to go through the evolutions. Would not those who composed the platoon be just as well satisfied if any other man came in? If then militia trainings are of no advantage to him in this point, what good can they effect? What have you gained by compelling him to attend those trainings? Look, on the other hand, at the evil which results from them, an evil which becomes greater

and greater every day. It is one of those things, the tendency of which is to produce evils which may one day become of great magnitude. The very man who marches in the ranks of the militia, if he is too poor to pay the fine which is levied upon him for non-attendance at the training, being unable to spare the money from his earnings, or not having it to pay, feels himself disgraced—he becomes irritated, and this feeling tends strongly to keep up a spirit of hostility to those who appear to be better off in life. Such men look even at the volunteers with hatred, and it is natural they should look upon others in the same way; because in towns and cities the militia are the objects of ridicule. The boys laugh at them, servants ridicule them, every one makes fun of them, and at best, you have nothing but a solemn mockery of a parade got up.

This has in part arisen from the employment of volunteers, who entirely took away all martial spirit from the militia.

Now, Mr. Chairman, can you have a militia in time of peace? So far as my knowledge of history will go, there never has been an instance of a militia, or what has deserved to be so called, except in governments which are essentially military. Take for example, the Romans. The whole code of law in their government, showed that it was intended to keep up a military spirit. For what purpose? Just as surely as you make a body military, just so surely you will find work for them to do; and the Romans from their earliest to the latest period in the history of their empire, did find employment for that spirit in foreign wars and conquests. So, sir, when France was made military by her conscription, which was a militia system, how was that spirit fed, for it must be fed, if you excite it? By foreign wars. There is but one nation now upon the face of the earth that has, properly so called, a militia law; it is more properly speaking a militia constitution. It is a state of being which, owing to accident of one sort or other, or to the character of the people, makes all men soldiers; sometimes good, and sometimes bad. Spain furnishes the only example in the world of a militia. They were at war, for a period of eight hundred years, fighting with the Moors for their own soil, and every man was compelled to fight. They had been invaded by France; they had the wars of the succession, and now they have fallen to battle with one another. War suits them very well; and if it is brought upon them, it brings the war spirit along with it. The great question then is, whether you can have a militia in time of peace, unless you have military institutions and employment. If you have forts and garrisons, this would help; or if you had a frontier enemy, or if you will march to foreign conquest. But can you make militia without actual war? What is the difficulty which you have to encounter with militia, on the field of battle? It is not that they do not possess as much patriotism or courage as other men, but the scene is new to them; they were not accustomed to it—they are panic struck. After they have been in battle two or three times, they will fight as well as any other men. What you want then, is military employment. How are you going to get it? If you have military employment, there will be soldiers, and they spring up out of the ground where you least expect them, and where you have not sown the seed. Has not the experience of our country demonstrated that this is the fact? Who were the soldiers of the revolutionary war? You had only two or three men of military science in the whole army. One of

them did nothing but give trouble, and at last was disgraced. Another, was a man of real merit, one of the most accomplished soldiers in our service, but one of the most unfortunate. No one doubted his patriotism and military skill.

The son of a blacksmith, or himself a blacksmith, in Rhode Island, made a distinguished commander. In the last war, who was the man that led our troops to victory in the north, General Brown, a man who never saw squadrons in the field, but who was called out from the state of New York, and happened to be acquainted with the ground, who was born with a character and properties and feelings that make a soldier; and the very first time he ever led the militia into the field, to their credit be it spoken, they gained a victory, at Sackett's Harbour. They deceived the enemy by what was thought to be a manœuvre, when in reality they were only retreating in haste, or, as some would call it, running away. The British were alarmed, and they ran away too. So the militia gained that battle, and in a way in which militia are very able to gain the first battle into which they may be led. It is improper, it is unreasonable to expect any thing else.

But we are brought back to the question, can you keep soldiers in time of peace? A shoemaker must have shoes to make, or else he will forget his employment, and his instruments will rust.

You cannot keep a violin player in full possession of the knowledge of his instrument, unless he practices every day. No man can keep up his knowledge of a trade unless he practices it constantly. Nor can you keep soldiers, unless you have real business for them to transact. How can you teach him? From the beginning of the world down to the present time, there has been only one mode, and that is, actual war; there indeed you may teach him the whole. You cannot teach him in time of peace without destroying civil virtues; and I say if you could make a complete soldier in time of peace with the same feeling as the common soldier acquires, I, for one, should regret that you ever possessed any such school of instruction. War is a great evil; its employments are brutal. There is poetry, probably, in war among the mountains, when it comes to be presented in engaging description, free from its honors. But Heaven help the poor country through which this poetry penetrates, unless it rages among sterile and uninhabited mountains, where there is nothing to be destroyed. Heaven help a poor country, such as Spain or Portugal, or the country which was the battle field of former wars in Europe, called the Low Countries. But when I say this, I do not mean to say that any state or people are to be taught not to defend themselves, and I do not believe that you can so teach them, with all the efforts of that sect which has been so often spoken of here; and with all the warm attachment which the people of that sect have to its peaceful doctrines, they have never been able, when war has sprung up, to suppress the feelings natural to some of their young men; and, sir, in proof of this assertion, you have the fact that some of the most distinguished warriors have been men who burst from that sect in defiance of all the restraints enforced upon them, and led our armies to the battle.

I have spoken, Mr. Chairman, of the militia, I mean of militia trainings, as being entirely insufficient for every useful purpose. Let any gentle-

man who is desirous to know what ought to be added to the picture, go and look at the trainings in and near the city of Philadelphia.

It is not merely, nor perhaps chiefly, those who are enrolled, but those who take advantage of the occasion to run into every kind of dissipation and vice. Whoever will incur the trouble and disgust of witnessing such an occasion, will, I feel sure, agree with me in the belief, that the mischief resulting from these trainings, far exceeds any advantages which are supposed to be derived from them.

Suppose a war were to come upon us, I care not how suddenly. Will you have gained any thing by your militia system? If not, are you at a loss for the means of defence? Never; it never has been, and it never will be so. The volunteer force, I mean the association that were below the city of Philadelphia, in the year 1814, on its return, passed in sight of the camp of a British General, whose name I forget at this moment. He enquired who they were, and he was told they were the youth of the city of Philadelphia, who had volunteered their services to defend their country. The General immediately answered, that it was impossible to make an impression on a country which abounded in such soldiers. And so it does abound with them, not only or particularly in our cities: I mean that our youth entering the volunteer service throughout the country, are soldiers by habit; they have the habit of arms; they have a sense of individual independence; a knowledge of their rights; a feeling that they have something worth contending for, which distinguishes them throughout the whole land from any body of men that has existed; which makes them ready at all times to be soldiers, whenever their services may be required; and they were thus prepared to be so with as little training as any people can have. The greatest difficulty, however, in making an entire soldier remains to be told. What is a soldier according to our modern system of war? The modern system has this happy effect, that, in general, the country is at peace in itself. What are armies made of? They are made of men reduced as much as possible, to the mere condition of machines, and submitting implicitly to whatever orders may be given to them: and among other things, they submit to personal, physical correction. Can you form such an army as this in time of peace? Or, if you could, would you desire to do so? Look at the most famous British brigade in the Peninsular war, in some respects the best and most distinguished corps, of the whole army, and probably the most effective! What were they taught? Never to step aside for any thing; and if they did step aside, they were punished with the cat o' nine tails, on their backs. If they were dying with thirst, they dare not stop to drink, though the water was up to their chins. By these means the writer on whose authority I speak, says, they became the best brigade in the army; that is, by bringing down all individuality or sense of right, and by training men to submit to whatever they might be told to do. But we cannot do this in any country in time of peace, and least of all, in this. What inducement then is there to hold out in the Constitution, such an injunction to the Legislature? The requirement of the present Constitution is that "the freemen of this Commonwealth shall be armed and disciplined for its defence;" the meaning of which is, that they are at all times to be armed, not only on the day of parade, but always; and always to be under discipline. Well, sir, armed they never have been, and disciplined they never can be. Otherwise to a certain extent, adopt

the system of volunteers. And what is that? The most perfect of the volunteer corps occasionally take the field; they march with knapsacks on their backs, and encamp with all the appurtenances and appearances of war. They devote a number of days in each year to the service, and to parade. How many days in the year would you take the poor man from his labor, to employ him in these militia trainings? How many holidays that is, not working-days would you take from him? because, in fact, you do so; since if he does not attend according to summons, he must pay his fine. How many days then, do you take from him in the fall and spring? The poor man earns, say, a dollar a day, and that amount, three days in each year, is lost to his family. The man above him suffers the same loss, because he pays the fine, but he can bear it better than the other. You first take his holiday, because he would not go if he could pay; he loses his time which is his money, and his family loses the bread which that money is to buy. Look at this operation, as it thus presents itself to our minds, and see whether any thing ought to be introduced into the Constitution which shall oblige the Legislature to recognize such a system. Come to the final results:—and what are they? A man who can pay his fines, has no need to arm or discipline, and thus you come down at last with the actual demands, to the man who cannot pay, and whose time and the labor of whose hands, is all that he has to live by. You compel him to march out.

What have you gained by all this? Is it not a sacrifice of sense to sound, and of substance to mere words? Is it not a mockery? Nay, is it not worse than a mockery, when we reflect that it is attended with positive injury, and injury, too, upon those who are least able to endure it? And when time of war comes, as he said before, what advantage have you derived?

In great exigencies every man must come forward; and of the full mass of hands and hearts in the United States that would offer themselves at such a time for the defence of their country, how many of them would have attended the militia trainings; or, of such, how many would you depend upon? This appears to me to be one of these things about which we have continued to talk a long time, without possessing any very distinct idea about it.

There is truth and reality in the assertion, that it is better than a standing army in time of peace. I fully concur in that opinion. No man can doubt it. But what standing army have you occasion for in time of peace? except, perhaps, for a few ports which are to be guarded, and which will require but a few men for each. You want no standing army in time of peace; and as to actual active force, why, even in the distressing and thankless service of the Florida war, where there are no honors to be gathered, where the soldier has to submit to every thing that is disagreeable and discouraging—even there you see how promptly volunteers have presented themselves from every part of the Union within a reasonable distance of the scene of action. During the last war, the whole land bristled with the bayonets of volunteers. You had a standing army during the war. Was it dangerous? Not at all. It was numerous, but the volunteers were so much more numerous, that no danger could be apprehended from it. I will not go further in this matter, except to say, that I will vote for that proposition, whatever it is, that will reduce the

demand on the time, and labor, and money of the citizen for this mere name, to the very minimum. Let the militia be enrolled, if you please, and postpone all further proceedings until the necessities of our country shall require some further steps to be taken.

As to that particular class of our citizens who are more especially concerned in the settlement of this question, and whom I esteem and respect as highly as any man can, I will say that, whatever relief may have been tendered to them, has been only an incidental one, and I shall be glad to have them relieved even by an incident. I shall be glad, and shall look upon it as one of the good consequences flowing from some established provision, that they shall not be annoyed as they have been in times of profound peace. When the time arrives that we are menaced, when danger is near and our common country is to be defended, then every man will agree that all must contribute—and even those who have conscientious scruples, although their scruples may be so far respected as not to demand that they should personally engage in that which would violate their consciences—still they must contribute towards the support of those who do personally defend their country. They must pay their share. I have no hesitation in going thus far; but in time of peace, it seems to me that it partakes too much of the character of the system as it has heretofore existed, to compel a man to pay who is conscientiously scrupulous.

For these reasons, Mr. Chairman, I prefer the amendment of the gentleman from Susquehanna, (Mr. Read) to the amendment to the amendment, which has been offered, and I shall accordingly vote against the amendment to the amendment.

Mr. Merrill, of Union said, that if he did not feel that he stood alone in the House, and alone supported the proposition, he should not now trespass on the time and patience of the committee. He felt himself compelled to coincide with much that had been said, as to inefficiency of the militia. He knew the system was not such as it ought to be. But so far from instituting any inquiry into the origin of the evil, in order that a proper and sufficient remedy might be applied; it seemed to him, that the course indicated by the arguments of gentlemen all round the House, was calculated materially to increase that evil. He believed that the inefficiency of the militia system, was to be attributed mainly to erroneous legislation, both by Congress and the Legislature of Pennsylvania. We ought to have, and it was perfectly practicable that we might have, as efficient a militia, as the wants of the country would ever require, provided a proper course of legislation should be pursued. The feeling of our people is in favor of the good republican doctrine, that the people *must be their own defenders*; and that no other doctrine could be acceptable to them so long as our republic existed. Having, himself, always entertained the belief, that the people owned the country, and that it was their duty to protect it, he would not for a moment surrender that opinion, nor could he for a moment believe that true republican principles could prevail in the minds of any portion of our citizens, who could forget that they had this great duty to perform. Let our youth, as they arrive at manhood, be taught to reject all defence from Prætorian Guards, Strelitz or Sanisories; from all hireling auxiliaries by whatever name they may be called; let them be taught under God, to rely upon their own skill

and bravery for the defence of the country, the common mother of us all and there will be no difficulty.

The legislation of the country has been calculated to destroy this principle. How? By the act of 1792, Congress provides for the enrolment of nearly two millions of men with our present population. The necessities of the nation never has, and probably never will require one tenth part of that number. It was intended by the framers of the Constitution that the enrolled militia should be armed at the public expense; but to provide arms for two millions of men was altogether out of the question. The revenues of the country would not bear the expense; therefore, the whole matter had been neglected. If Congress, who have the control of the whole subject, would pass a law requiring an efficient training for a few years, say four or five years, (for we do not want men to be able to command the armies of a monarch) we should have no reason to complain. It was the duty of the government to provide military instruction for the citizens as well as any other kind of knowledge; but with the present number of the militia, it was beyond the means of the government to give proper instruction to the officers, or any at all to the privates. All this had a tendency to draw the minds of the people from the true principles of self-government and self-defence; and to lead them to feel contempt for one of their most important institutions, because its practical operation was not such as pleased them. It cannot be denied that this is all wrong; and our State Legislatures have contributed largely to it. They have come in aid of Congress in this matter. They are, however, somewhat excusable from their want of power; but they have made a mistake in using the power they had. They have brought into existence a corps of men who have exclusive privileges. Men who have wealth and ambition enough to arm and equip themselves in a particular manner, are excused from the drudgery and mortification of a militia parade, and their time reduced to less than one third of what the others are obliged to devote to their irksome and loathsome duty. The very elevation of the volunteers tends to the degradation of the rest of the militia.

Put the volunteers back to the militia and reduce the number of the whole to the wants of the country; Pennsylvania could never want more than twenty or thirty thousand, and these could be instructed in the elements of military knowledge, so as to be equal at least to our present volunteers.

They would be called on in regular succession; and the whole able bodied part of our population would be made to feel that they constituted a part of the great national defence; and they will feel themselves devoted in their own estimation and in the estimation of others, in proportion to the magnitude of the responsibility they have assumed. It will then be a republican militia and there will be no exclusive privileges. In times of public exigency, extend your enrolment up to forty-five. Blend the prudence of age, the vigor of manhood, and the fire of youth, and you will have a power for defence unassailable, for attack irresistible.

There is another objection to relying on volunteers under our present law. Think how many mourners the destruction of a single volunteer company would make! A whole generation of hopeful youth may be cut off in a single battle. If in peace they have exclusive privileges, in time of war they have exclusive burdens. In a republic both are wrong.

It may be thought that these considerations cannot have much to do with the action of this Convention. It may be so. But he did not wish it to go abroad among the people, that this Convention was indifferent to the instruction of all our citizens, so far at least as to give them the elements of military knowledge. As to the other part of the Constitution referred to by the President of the Convention, that the government was bound to diffuse knowledge to every class of her citizens, he would only ask how far was it bound to go? Only to give the elements and then put them in a condition to gain further information for themselves. He was anxious this should be the case in relation to the militia. Give every citizen a chance to qualify himself to be made a soldier, whenever his country should require his services.

But the question had been asked, where had the militia done any thing? They fought with credit during the whole of the last war, and during the war of the revolution, the success of the good cause, under Providence, often depended on the courage and patriotism of a few militiamen. If instances were necessary, it might be asked, who are Jackson and Brown? and what kind of force did they command? and where did they learn the art of war? Who under Harrison defended our long and wild North-Western Frontier? I see before me a member of this body, (Mr. Clark, of Dauphin,) who was a brigade inspector of the militia of our North-Western border, and who, when Erie was threatened by the British, rode in twenty-four hours more than ninety miles, and distributed his orders with such speed, that within two days, there were militia men at Erie, from the distance of fifty and sixty miles. His zeal and energy and that of the men who obeyed his requisitions, is worthy of all praise, and the document is recorded in the office of the Secretary of the Commonwealth, giving them the thanks of Governor Snyder and the thanks of the country. In an especial manner is our worthy fellow member thanked for pledging his credit and his estate to raise supplies for those patriotic men who had left their homes at a moments warning, and without the means of supporting themselves abroad; and when it was out of the power (as the same records shew) of both the General and State Governments to send him money. At the very time when these militiamen saved our frontier, a regular army, formed on scientific principles, must have been disbanded, if similarly situated. Instead of defending the rights of our citizens, the regular soldiers must have become separated in bands of marauding and plundering banditti.

Circumstances like these can only happen in the militia of a free people, and it is only a free people who can appreciate such patriotism. They must have not only that knowledge to be gained from books and theories; but they require that practical experience which enables them to apply their force to the right place.

But the time of adjournment had arrived and he could not continue the argument, nor ask the committee to rise on his account. The whole argument from all quarters of the House had tended to encourage volunteers, and to lay aside the militia. He objected to the system. Whenever any considerable portion of the people come to think their aid in the defence of the country not necessary, they must begin to think their stake in it to be undervalued, and this is contrary to the plainest precepts of republican equality. If Congress would take time to remodel the system

according to the suggestions of a board of officers who examined the subject some years ago, it might be vastly improved.

There was not time now to discuss the question of conscientious scruples. He did not believe the right of conscience to be an imperfect one. We did not yield this right to society. One great object of entering into society was its preservation.

On Motion of Mr. MANN, the committee rose, reported progress and obtained leave to sit again; and,

The Convention adjourned.

TUESDAY AFTERNOON, OCTOBER 24.

SIXTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. CHAMBERS in the chair, for the purpose of considering the report of the committee on the sixth article.

The question pending being on the motion of Mr. FULLER, to amend the amendment offered by Mr. READ, by striking therefrom all after the word "the" in the first line, and inserting in lieu thereof, the words following, viz: "Freemen of this Commonwealth shall be enrolled and organized, to be armed and disciplined as may be directed by law."

It was decided in the negative, as follows:

YEAS—Messrs. Banks, Bedford Bigelow, Brown, of Northampton, Cleavenger, Cummin, Fuller, Gilmore, Hastings, M'Call, Merrill, Nevin, Rogers, Smith, Smyth, Stickel, Sturdevant, Taggart, and Woodward—19.

NAYS—Messrs. Agnew, Ayres, Barclay, Barndollar, Barnitz, Bell, Biddle, Bonham, Brown, of Lancaster, Carey, Chambers, Chandler, of Chester, Chauncey, Clapp, Clarke, of Beaver, Clark of Dauphin, Clarke, of Indiana, Cline, Coates, Cochran, Craig, Crain, Crawford, Crum, Cunningham, Curll, Darlington, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnell, Dunlop, Farrelly, Forward, Foulkrod, Fry, Gamble, Gearhart, Grenell, Harris, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Magee, Mann, Martin, M'Dowell, M'Sherry, Meredith, Merkel, Montgomery, Myers, Overfield, Pennypacker Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Rogers, Read' Riter, Ritter, Royer, Russell, Saeger, Scheetz, Scott, Sellers, Seltzer, Shellito, Snively' Sterigere, Stevens, Thomas, Todd, Weidman, White, Young, Sergeant, *President*—98.

The question then recurring on the amendment offered by Mr. READ, to the fourteenth section of the report of the committee, by striking out all after the word "the" in the first line, and inserting in lieu thereof, the words following, viz: "Citizens of this Commonwealth shall be enrolled, and in case of threatened invasion or insurrection, shall be armed and

disciplined for its defence; a division of the question was called for to end with the word "citizens." The question was then taken upon this branch of the amendment, and it was decided in the negative.

The question being then on the second branch of the amendment, in the words following, viz: "of this Commonwealth shall be enrolled, and in case of threatened invasion or insurrection, shall be armed and disciplined for its defence."

Mr. INGERSOLL asked for the yeas and nays, and they were accordingly ordered.

The question was then taken on the second branch of the amendment, and decided in the negative, as follows, viz:

YEAS—Messrs. Biddle, Brown, of Lancaster, Carey, Clapp, Cochran, Crum, Darlington, Farrelly, Jenks, Martin, M'Dowell, Meredith, Pennypacker, Purviance, Reigart, Read, Royer, Russell, Smith, Snively, Thomas, Young, and Sergeant, *President*—23.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Barnitz, Bedford Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chambers, Chandler, of Chester, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Cope, Craig, Crain, Crawford, Cummin, Cunningham, Curll, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnell, Dunlop, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Ingersoll, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Magee, Mann, M'Cahen, M'Call, M'Sherry, Merrill, Merkel, Montgomery, Myers, Nevin, Overfield, Pollock, Porter, of Lancaster, Porter, of Northampton, Riter, Ritter, Rogers, Saeger, Scheetz, Scott, Sellers, Seltzer, Shellito, Smyth, Sterigere, Stevens, Stickel, Sturdevant, Taggart, Todd, Weaver, Weidman, White and Woodward—99.

Mr. PORTER, of Northampton, moved to amend the fourteenth section of the report of the committee, by striking out the words, "the Legislature may hereafter, by law direct," and inserting, "is or shall be directed by law."

Mr. P. explained that the object of his amendment was to make the section provide for whatever direction might be given to an act of Congress, or an act of the Legislature.

Mr. FORWARD, of Allegheny, would suggest to the mover, whether it would not be better to insert in his amendment the words, "shall, or may be." He (Mr. F.) thought that the amendment did not read so well without them. It seemed to him to bear rather the stamp of dictation to the Legislature, and a recognition of the present system accompanied by a desire that it might be continued. He might perhaps, be mistaken in his impressions.

Mr. PORTER modified his amendment by striking out the words "is or shall," and inserting "may be."

After a few words from Messrs. STEVENS, FORWARD, MEREDITH, PORTER, and DUNLOP, as to the phraseology of the amendment,

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

Mr. BELL, of Chester, moved to amend the section by inserting after the word "law," these words: "Those who conscientiously scruple to bear arms shall not be compelled to do so, nor shall they be compelled to pay an equivalent therefor, except in times of exigency, or war."

Mr. M'Cahen, of Philadelphia county, asked for the yeas and nays.

Mr. Bell, of Chester, said, that it was with reluctance he rose to renew the consideration of this important, though vexed question. But representiug as he did, a large class of persons who were deeply interested in its fate, he deemed it to be his duty, seriously to discuss the subject, and to ask for it a fair, candid and impartial examination. It was now fairly before the committee. So prominently had it presented itself to the attention of this body that the consideration of it had been anticipated. It had been incidentally discussed—when other questions were more immediately under consideration. Every gentleman had then felt sooner or later, he should have to meet it, discuss it, and decide upon it. It was a question of vast magnitude, as it affected rights immeasurable, except by that standard which is implanted in the breast of man by the Creator: rights, not merely civil and political, but resulting from that allegianee which is due from humanity to God. Regarding it in this point of view, he would ask whether it ought not to be approached solemnly, and whether we should not cast away all prejudices, and eschew all passions and everything calculated to mislead the understanding? Whether we were not to look at the question, no matter what had been said on the subject, fairly and honestly, and in the hope of at least, coming to a righteous judgment? Such prejudices, he was aware he would have to encounter. Such prejudices—if he was correct in applying them,—but perhaps, it was too harsh a one; and if so, he begged pardon of the committee. However, to use the word in its mildest sense, he would say that prejudices were held by some of the members of this committee, resulting either from education, or their habits and morals, and which made it difficult for them to appreciate the sentiments of those who were conscientiously scrupulous against bearing arms at any time. What, he would enquire, was the question? It was simply this: Whether those forming a part and parcel of the people of Pennsylvania, who entertain religious scruples against bearing arms, should be placed on an equality with our fellow citizens, who do not? We had heard something here relative to privileged classes, and it had been intimated that the memorialists asked for privileges, and to be placed above the mass of their fellow citizens. This is not the fact. The Friends sought only to be put on the same terms as other persons of the community. Why did he say so? Because by the fundamental law of Pennsylvania, as it exists, the religious seruples of all men were respected, except in reference to the defence of the State. If gentlemen would refer to the Bill of Rights, they would find that such was the fact. He considered that those who had memorialized us, had made nothing more than a reasonable request. They wished to be protected equally with the rest of their fellow citizens. Nor was this peculiar scruple relative to bearing arms confined to one class of religionists. It had been asserted in the course of the discussion, that the large and respectable society of Friends were the only body that was demanding the right which they claimed. This was not the fact, for a large society, called Mennonists, also asked it. The amendment, now on the table, embraced all classes of men, all sects, all religious denominations. It extended protection to the whole community. Besides those two societies which he had named as claiming this right, there were many

others. There was a large number of people in Lancaster and other places, who entertained conscientious scruples against bearing arms. A class existed, calling themselves German and United Brethren, which would rather surrender all their worldly wealth than give up their notions in respect to bearing arms. He did not in the least object to the wide scope of the amendment. He much preferred it in its present shape than if it were less general in its character. What did we ask? He said *we*, because he felt the honor of standing on this floor as the advocate of the memorialists; not that he entertained the scruples which they did. What, then, he repeated, did we ask? Liberty—religious liberty—liberty of conscience. Nothing more than this.—Freedom of conscience—to pursue the dictates of our hearts, with a religious intent—to worship God in our own way. We asked to be placed on the same foundation as we are in regard to liberty of speech—to the right of acquiring property, and to the right of pursuing our own happiness—all which rights are secured to us by the Constitution of Pennsylvania. He would repeat, that the memorialists asked nothing more. The right of conscience was of more importance than any other which he had mentioned, because the latter sprung from the institutions of society, whilst the former originated from the connection which exists between the Deity and man. And, shall this protection, asked for in this enlightened age, be refused on the ground that the feeling which originated the request is not entertained by the whole community? A meritorious, well-deserving and highly respectable portion of the people had asked for it, and why should we not grant them it? It had been said that this was a right subordinate to the right of self-defence,—an indefeasable right as it had been called by the gentleman from the city of Philadelphia. It is implanted in the very nature of man, and accordingly we were struggling for this right from the first dawn of religious liberty. Yes, whenever and wherever a ray of light had succeeded the gloom which had overshadowed the world—men had yielded up their lives in thousands as martyrs, in the cause of religious liberty. History was full of examples of the obstinate firmness with which men had fought for this natural right. Look to France—to the Waldenses and the Huguenot, who turned every house in a fortress, and every site into a battle field. In Ireland, the best blood had been poured out like water, in the sacred cause. It had every where crimsoned the green fields of the Emerald Isle. In England, the martyr had yielded up his life at the stake, rather than surrender his religious belief. In Scotland, the Presbyterians waged an obstinate and exterminating war in defence of their creed, and to free themselves of the fetters which their English neighbors sought to bind upon them. Men there, fled from their homes, deserted the cottages of their affections, and abandoned the protection of an organized government, because that protection was accompanied by the assertion of a right to control the conscience of the subject. All this was overwhelming proof that religious liberty was felt to be dearer than life, and would only be surrendered with it. But among the great illustrations of this truth, might be instanced the facts attending the first settlement of Northern America. Under the most discouraging circumstances, thousands who had partaken of the advantages of civilization, left the land of their fathers, and abandoning the luxuries of polished life, withdrew from the baleful shade of an

oppressive government, to seek a howling wilderness, and such safety as they might find at the hand of the rude savage; rather than endure the desecration of a right which they insisted on as sacred. Among the glories of the early history of the liberties of this country, was, that here, freedom of conscience was first proclaimed as among the fundamental principles of its governments. In the reign of Charles II, of England, Roger Williams, actuated by a liberality of feeling in advance of the age, and which sheds lustre on his memory, established religious liberty, as one of the prominent characteristics of the government he founded.

This was so early as the fourteentuh century, Charles II, and from that to time the present, this feature of our polity, had been every where cherished and fostered in this country. The same principle was promulged by William Penn, shortly before he left England for America. In the imperishable instrument in which he delineated the "frame" of the government he was about to establish, he taught, as a grand truth, which admitted of no contradiction, "That all men have a natural and indefeasable right to worship Almighty God, according to the dictates of their own con sciences; that no man can, of right, be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; that no human authority can, *in any case whatever, control or interfere with the rights of conscience;* and that no preference shall ever be given, by law, to any religious establishments or modes of worship." The absence of all right to "control or interfere with the rights of conscience," under any circumstances, is here as strenuously and emphatically denied as is the position, not disputed any where within the broad borders of Pennsylvania, that "no man can, of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent." This great principle, thus proclaimed by Penn, and insisted upon by his friends and followers, had been fully carried out, and never violated, except so far as it may be impaired by that clause in the existing Constitution of Pennsylvania, under consideration, and keeping this in view he might assert, without fear of contradiction, that no authority can or ought to be tolerated by which men may be deprived of the right to follow the dictates of their own consciences.

The memorialists asked for no privilege—no franchise—as had been alleged. They demanded but a bare right, the possession of which their great leader—the founder of this Commonwealth—had guarantied to them. If they were here importuning for the grant of an exclusive privilege, for something not possessed by other citizens, he would be the last man to stand here as their advocate; but they desired nothing more than the introduction of a clause, to some extent, prohibiting the enactment of laws interfering with the religious scruples they entertained, and this was nothing more than was already secured to their fellows. This was asserted as a principle in the Constitution of 1776, and repeated in the existing Bill of Rights. It was, perhaps, sufficient, merely to call attention to the fact, that from the first settlement of Pennsylvania, down to the present moment, it had been observed as a rule not to be controverted, that no law should be made, having the slightest tendency to interfere with or control freedom of conscience, except in the particular instance of which, as seemed to him, the memorialists so justly complained.

The principle, he therefore contended, was at the foundation of our institutions, that there was no power in our government to interfere with the rights of conscience. If this principle was correct, and none here would deny it, what was the question for this Convention to decide? Simply this: do any portion of our fellow citizens entertain conscientious scruples against performing military duty, or is it merely an affectation of a scruple, on their part, to avoid the burden and hazard of bearing arms? When we looked to this question, we would find that it was one merely of veracity. Were their professions sincere? Have those who have given us, for so many years, proof upon proof of their sincerity, and who have suffered themselves, for the sake of their religious scruples, to be reviled and oppressed, been all this time practicing deceit? If their scruple was an honest one, they had a right to maintain it, and we were obliged to secure them in the right by the aid of the law. Sir, said Mr. B. in asking for the insertion of this protective provision in the Constitution, it is not necessaay that I should refer to the character of the largest society which claims exemption from military service. If they were here for an exclusive favor, it might be necessary to speak of their moral and social worth, and of the great benefits which they had conferred upon Pennsylvania, and the important part they had acted in the establishment of our free institutions. It might, too, be necessary to follow them into the friendly and benevolent circle of their domestic retirement. But, it was a right, and not a privilege, which they asked, and he, therefore, forbore. Had we any evidence, he asked, except our own assertions, that they are insincere in the scruples which they profess to entertain. In the Constitution, as it now stood, there was at least a practical recognition of the principle for which he contended, and though it did not go so far as was demanded, yet it furnished a proof that respect had been paid to the fact, that a portion of our fellow citizens entertained an honest scruple in regard to bearing arms. It remained to inquire, what was the extent of this scruple. Did it go beyond mere personal service? If it did, it was entitled to our respectful consideration. If gentlemen would turn to the memorial, they would find that their scruples extended to the payment of an equivalent for service, and they put it on the natural ground that, being averse to war, they were opposed to the means by which a state of war might be created and maintained. They asked to be relieved not only from the duty of bearing arms, but from the equally odious necessity of paying an equivalent for it. Was it for us to say that this scruple was affected? Should we set up a standard for other men's consciences, and pronounce that this or that scruple of conscience is unreasonable? The members of this religious, worthy and respectable society, say that they entertain scruples of conscience equally strong against paying an equivalent, as against bearing arms. Now, the principle which he had before indicated was strong enough to protect every scruple which might be professed. It extended to one case as well as to the other. If the scruple was sincere we were bound to recognize it, and protect them in it; and we had no right to pronounce that it is unreasonable. He might, perhaps, ask, but he did not do it, that any society or individual should be exempt, under the rights of conscience, in time of danger and of war, from personal service or the payment of an equivalent. They had a right to come in and demand this, but that question was surrounded with so many

difficulties, that they waived it altogether, and only asked to be exempted in time of profound peace. But, when the exigencies of war should require it, they remain like other citizens, subject to the demand of the government upon them for personal service or its equivalent. If the question was between convenience and inconvenience, who would hesitate in his decision? If the question be between right on the one side and mere inconvenience on the other, would the argument resulting from inconvenience defeat the prayer of the petitioners, and deprive them of a right which from the origin of our Constitution, had been held sacred.

As to the frauds which were anticipated by some gentlemen, no man would, in time of peace, resort to fraud for the purpose of procuring an exemption, and in time of war, it would not avail. Then, all classes would be on the same footing, and be compelled to render personal service or an equivalent. All they asked was freedom from the burden and vexation of this duty in time of peace, when their exemption could be productive of no ill effects. What though one half or three-fourths of the people should, in time of peace, affect a scruple in order to avoid militia training. Would the country lose any thing by it? What advantage would be derived from the continuance of the militia trainings, even though every citizen attended them? In time of war when their services were wanted, there would be no room for fraud or the allegation of any scruples,—for no one will be exempted, except upon the payment of an equivalent. This feature was not a novel one in our Constitution. This was not the only State in the Union which had set an example of freeing from the burden of militia service, the tender consciences of their citizens. The Constitution of Vermont, provides that "Quakers and Shakers, the Judges of the Supreme Judicial Court, and the ministers of the Gospel," may be exempted from militia duty. The Constitution of New Hampshire, says: "No person who is conscientiously scrupulous, about the lawfulness of bearing arms, shall be compelled thereto, provided he will pay an equivalent."

We find, therefore, that other States recognize the existence of these scruples and protect them. Should we then, whose State was founded by this very sect which demands the exemption, and who see every where around them the evidences of their patriotism and worth, should we be behind others in maintaining the sacred principle of freedom of conscience, which by this society was laid at the foundation of our institutions. Should the proposition which he had offered succeed, any defect which might arise in its operation, might be remedied by the Legislature. If fraudulent evasions were practiced under it, the law would provide means for their detection and punishment. Mere inconvenience ought not to be urged as an obstacle to the adoption of the proposition.

One word in reply to the gentleman from Franklin, (Mr. Dunlop) who suggested a constitutional difficulty. He argued, that as the Constitution of the United States gave Congress the power to arm and organize the militia, and call them into service; any provision by the States for the exemption of any particular class from militia service, would be an infraction of the Constitution. In his very ingenious argument, he mentioned that this being an exclusive power of the General Government, all the provisions made in relation to the same subject by the States were null and void. If the gentleman would read the case of Moore and Houston, he would find that the power is concurrent between he two jurisdictions. If Con-

gress choose to exercise the power, then our State Legislature upon the subject must succumb to the superior authority of the Consitution of the United States. But there could be no difficulty in our exercising the power, while it was not exerted by Congress. Mr. Bell concluded by expressing the hope that the further consideration of this subject by the committee would clear it of all doubt and difficulty, and that the reasonable demand of the memorialists would be complied with.

Mr. Woodward said, he had refrained from taking any part in this debate while it related exclusively to the organization of the militia, a subject of which he had no particular knowledge. But the committee had now arrived at a different question. Having rejected all the amendments which have been offered, we had come back to the report, and it was proposed to modify this in the manner suggested by the gentleman from Chester. The proposition went to exempt all persons professing conscientious scruples, from military service and from paying an equivalent therefor except in times of war. He was opposed to the introduction of any such provision into the Constitution. The Constitution of 1790 contained a provision, which had been stricken out on the motion of the gentleman from the county, (Mr. Brown) to this effect—that those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service. I voted against the motion, for I saw no reason for striking out that provision. It was, however, done by the assistance of those gentlemen who have the most direct interest in this question, and now we are asked to go further and to exonerate those professing conscientious scruples, from all military taxation. He called it taxation, because it was a mode of compelling men to contribute to public burdens.

Sir, said Mr. W. I have always been taught that peace is the time to prepare for war, but how can you prepare for war without money, which is its sinew ? We are called on to exempt a body of people from the payment of the taxes in a time of peace, which are necessary not only to prepare for war but to prevent it.

These military fines or taxes, as he called them, went into the Treasury for the use of the Government, and he was opposed to exempting any class of citizens from their payment. It seemed to him we should be doing great injustice to our citizens at large, and violence to our best interests, should we yield to any class or portion of the people, however respectable, entire exemption both from military service and its pecuniary equivalent. During the progress of the debate, we had heard a great deal of the freedom of conscience. He concurred in all that gentleman had said of the freedom of conscience and the sacredness of conscience, and he was unwilling in any manner to interfere with the full enjoyment of his rights of conscience to which every human being was entitled, but it struck him that the rights of conscience were well enough secured by the Constitution as it stands, and that this demand for further provision in behalf of conscience, which the Friends are now pressing on us as a matter of right—for the gentleman from Chester demands it in their name as a matter of right—is quite unnecessary and a novelty in Pennsylvania. I can understand how a man may have conscientious scruples against bearing arms for the purpose of taking away the lives of his fellow men, and there is much reason for being asked to excuse that peaceful sect from such a duty ; but, when Government asks an annual contribution either in

services or money for the purpose of preventing all necessity for violence and force, I can not, sir, understand how it is a case for tender consciences, nor why both money and services should be forbid by conscience. It is a new case—to me a novelty.

Gentlemen have referred to Penn's Charter, wherein, as in our bill of rights, the freedom of conscience is abundantly guarantied. Every man is permitted to adopt whatever religion and creed he pleases, and to worship Almighty God according to the dictates of his conscience, and no man is permitted to molest or make him afraid; but no where in Penn's Charter, in our Constitution or laws, do you find the principle recognized which is now sought to be introduced. Exemption from taxation is the last thing he would ever have expected the Quakers to ask for. Their history informs me, sir, that they have always regarded it as a religious duty to contribute to the support of the Government under which they lived, and that conscience, instead of interposing to shield them from the demands of Government, has bound them to a strict and faithful discharge of all the obligations of good citizens. In Proud's History of Pennsylvania, gentlemen will find the following account of the ideas which this sect used to entertain, if they do not still, of their duties to Government.

"Their great care and strictness, in rendering to *Cæsar*, according to their manner of expression, that is to the *Government*, its *dues;* in the punctual payment of taxes, customs, and discouraging all illicit and clandestine *trade;* and in being at a word in their dealings:—Insomuch, that, in their particular advices to their brethren they say:—"As the blessed truth we profess, teacheth us to do justly to all men, in all things; even so more especially, *in a faithful subjection to the Government*, in all godliness and honesty; continuing to render unto the King what is his due, in taxes and customs, payable to him according to law."—"For our ancient test.mony hath ever been, and still is against defrauding the King of any of the above mentioned particulars, and against buying goods reasonably suspected to be *run*,"—"or doing any other thing whatsoever to the injury of the King's revenue, or of the common good, or to the hurt of the fair trader; so, if any person or persons, under our name or profession, shall be known to be guilty of these, or any other such *crimes* or *offences*, we do earnestly advise the respective *monthly meetings* (hereafter explained) to which such *offenders* belong, that they severely reprimand, and *testify against* such offender, and their unwarrantable, clandestine and unlawful actions"—we being under great obligations of gratitude, as well as *duty*, to manifest, *that we are as truly conscientious to render to Cæsar, the things that are Cæsar's, as to support any other branch of our christian testimony.*" And so great was the importance of this affair with them, that an annual enquiry was regularly made through all parts of the *British* dominions, where they had members of society, whether the purport of these advices were duly put in practice, or not, and to enforce the same."

I have always supposed that these people were to be looked to for good examples of citizenship as well as for all the other virtues, and never before did I hear that conscience had taken alarm at the ordinary and reasonable demands of the kind and paternal Government we enjoy. Why, sir, where is this principle of exemption, if once adopted, to stop? The Legislature of this State may think it necessary in times of profound peace to buy arms and munitions of war—to organize and drill the militia—to

encourage volunteer corps and to make large preparations against the hour of need and peril. All this will require money, and who shall contribute it? Since these preparations point to war, the Friends cannot conscientiously contribute and they must be exempted, you say. But another and another class of community come forward with the same plea of conscience, and, on the same principle, they too must be exempted from all participation in these arrangements—this peace establishment—and finally it is discovered that the State cannot be armed and put into an attitude of defence at all. What then is to become of her? Why, sir, war would be inevitable. Our feeble condition would attract assaults and that greatest of human calamities would be certainly brought on us by the tender consciences of the Commonwealth, which refused to keep up an ability of defence. True humanity might dictate the preparations I have supposed or more, and they would have the effect to deter hostility, prevent bloodshed and preserve peace. The gentleman from the city of Philadelphia, (Mr. Scott) has shown conclusively how extensively the fact of an organized military force had operated with the enemy during the last war and how salutary such impressions may prove in future. But you lose the benefit of such impressions on the mind of an enemy when you deny to the government the means of making the requisite preperations, and if you excuse those who are conscientiously scrupulous, not the Quakers only, but the Menonists, the Dunkers and perhaps every man of any religious creed, may claim the benefit of the exemption, so that your government will become defenceless and powerless.

Without a formal renunciation of its authority, and without open resistance to its demands, it will be left at the mercy of any foe who may choose to attack it from without, or of any enemy within its bosom, who may desire to rend and overthrow it. Now, sir, I have shown from Proud's History what the opinions of the society of friends are, in respect to public contributions; and I find, in the Constitution of 1776, the principle adopted and recognized under which they seem always to have acted. The 8th section of that Constitution is in these words: "Every member of society hath a right to be protected in the enjoyment of life, liberty, and property; and therefore is bound to contribute his proportion towards the expense of that protection, and yield his personal service when necessary, or an equivalent thereto; but no part of a man's property can be justly taken from him, or applied to public uses, without his own consent or that of his legal representatives; nor can any man, who is conscientiously scrupulous of bearing arms, be compelled thereto; nor are the people bound by any laws but such as they have, in like manner, assented to for their common good."

Mr. Chairman, this is wholesome doctrine, and these are the principles of Pennsylvania. They pervade all our institutions; and I had hoped they were cherished by all our people. I would respect conscientious scruples against bearing arms, where they are sincerely entertained, and would not ask any man, in peace or war, to take up arms against his conscience; but then he should pay a pecuniary equivalent, such as the government might assess. This is all that has ever been demanded; and this seems most reasonable and just. I have looked in vain in our own plans of government and Constitutions, and in the Constitutions of other States, for any such extraordinary immunity as is now asked for a part of our fellow citizens.

But we are told we must not undertake to judge of men's conscinces; and it is more than intimated, that to argue against this "*demand*" of conscience, is to trespass on holy ground. I agree that conscience is a sacred right; but when I am asked to vote for exempting a large class of our most opulent citizens from the contribution to public burdens which other citizens have to make, on the ground that conscience forbids them to contribute, may I not inquire, if it is a case for conscience? If an enlightened conscience ought, or can, interpose a plea in bar in such a case? It seems to me to fall peculiarly within the scope of our duties; and I should feel that our constituents had reason to complain, if we yielded to this mild "*demand*" without investigating it closely and severely.

I know the proposition is often stated in this form: "It is wrong to take human life. And it is the same thing to pay another for taking it as to take it ourselves;" and in this way it is supposed the argument is just as strong against paying pecuniary equivalents for military service, as it is against performing the service. Now two things are forgotten by this argument: First, that the pecuniary equivalent is for the *general purposes* of the government; and, secondly, that all military service, as well as pecuniary equivalents, are designed to assist to preserve peace, and not to promote war. Peace is the state our country desires. War is a calamity, and government must be trusted with the means of averting it. If government finds military preparations to be the most effectual means, where is there room for conscientious scruples against co-operating with government?

There is another view of this matter to be taken. The people who have sent in their petitions here, asking for this exemption, are among our most opulent citizens, and have a large amount of property to be protected by the government. Can they conscientiously ask for protection, when they refuse to furnish means? Protection and allegiance are reciprocal duties; and it seems to me that the law of allegiance binds every citizen to a discharge of all his obligations to the government which gives him protection, until he is ready to transfer himself to another asylum. Surely, while a body of men ask and enjoy protection from the government for their persons and property, it would be unwise to give them the power, by an affirmation of conscientious scruples, to absolve themselves from their reciprocal duties to the government.

I have an objection to the amendment, founded on its generality. Nobody but the society of Friends is asking for this exemption; and if it is to be granted, let it be to them specially and alone. The amendment goes to exempt every body who may profess conscientious scruples. Let us not outrun the expectations of the public by offering universal exemption from taxation; but if we are to have a select and privileged class among us, let us name and specify them in our Constitution, so it may be known who are intended to be benefitted. In the first establishment of a privileged order of men, we ought to be more exact and specific than the amendment is; and if gentlemen insist on pressing it, I hope they will make it so.

On motion of MR. DARLINGTON, the committee then rose and reported progress, and obtained leave to sit again.

The Convention adjourned.

WEDNESDAY MORNING, OCTOBER 25.

Mr. DUNLOP submitted the following resolution:

Resolved, That as soon as the present article is passed upon in committee of the whole, that all further proceedings towards amendments of the Constitution shall cease, and that the Convention will proceed to consider, upon second reading, those which have already been acted on in committee of the whole, so that a speedy adjournmeet of this body may be effected.

The resolution having been read,

Mr. DUNLOP moved the second reading, and asked for the yeas and nays on this motion, which were ordered.

The question was then taken on the second reading, and decided in the negative, as follows:

YEAS—Messrs. Agnew, Baldwin, Chandler, of Chester, Chauncey, Cochran, Cope, Craig, Darlington, Dickey, Dillinger, Dunlop, Harris, Long, M'Sherry, Merrill, Pennypacker, Reigart, Royer, Seager, Scott, Serrill, Snively, Thomas, Todd, Weaver, Sergeant, *President*—26.

NAYS—Messrs. Banks, Barclay, Barndollar, Barnitz, Bell, Biddle, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Crain Crawford, Crum, Cummin, Cunningham, Curll, Darrah, Dickerson, Donagan, Donnell, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Grenell, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Houpt, Hyde, Ingersoll, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs Lyons, Magee, Mann, Martin, M'Cahen, M'Call, M'Dowell, Merkel, Montgomery, Myers, Overfield, Pollock, Porter, of Northampton, Purviance, Read, Riter, Rogers, Russell, Scheetz, Sellers, Seltzer, Shellito, Sill, Smyth, Stickel, Sturdevant, Taggart Weidman, White, Woodward, Young—85.

SIXTH ARTICLE.

The Convention again resolved itself into committee of the whole, Mr. CHAMBERS, in the chair, for the purpose of considering the report of the committee to whom was referred the sixth article of the Constitution.

The question pending, being on the motion of Mr. BELL, to amend the fourteenth section by inserting after the word "law" in the third line, the following, viz:

"Those who conscientiously scruple to bear arms, shall not be compelled to do so, nor shall they be compelled to pay an equivalent therefor, except in times of exigency or war."

Mr. DARLINGTON requested the indulgence of the committee for a very moments, while he only briefly stated such views as had occured to him, in reference to this subject. It seemed to him that there was a disposition in the committee to discuss the question of conscientious scruples, in this place. Although he thought that a wider scope for this discussion would be presented when the Bill of Rights should come up for consideration; yet, if it was the sense of the committee that the discussion could with more propriety be carried on now, he hoped to hear from gentlemen

all that could be said on the subject. It was probable that the committee were in some measure, influenced by the fact, that in the old Constitution, a clause of this character was originally reported in the Bill of Rights, and was afterwards transferred to the sixth article. This was done after the Convention had been for some time in session, and the Convention had adjourned until a later period of the year. After the adjournment, and before the Convention met again, the memorial of the society of Friends was sent in, and the prayer of that memorial was acceded to by inserting this provision. It was thought proper to transfer the provison to the place where it now stands. From various conversations which he had with gentlemen, and from observation of the desire exhibited by the committee, it seemed to him to be the pleasure of the committee to settle the question here, and not to bring the provision into the Bill of Rights. He cared not where it found a place, so that the clause was inserted somewhere. The matter seemed to be narrowed down to the single question, whether conscientious scruples against bearing arms do exist in any class of our citizens; and, if so, whether such scruples deserve respect at our hands. Could there be any doubt in the mind of any man, as to the existence of such scruples? Was there any one who could bring himself to the belief that it was merely a fallacy and delusion. Was their any one who had read the history of the Commonwealth of Pennsylvania, as it was to be found in the annals of her legislation, and could come to the conclusion that there existed no such thing as conscientious scruples? Was it not for this that our forefathers fled from a land of persecution, and settled themselves down here? What was almost the first step which they took after their arrival in this country, but recognition of these conscientious scruples? In the charter of privileges granted by William Penn, this principle is recognized in the strongest terms. In the first proceeding of the Legislature of this Province, in 1705–6, we find a special enactment, recognizing and tolerating this express right. By a reference to a law passed long before any other charter of rights but that granted to William Penn, the following enactment would be found.

"Because no people can be truly happy though under the greatest enjoyment of civil liberties, if abridged of the freedom of their consciences, as to their religious professions and worship: And Almighty God being the only Lord of conscience, father of lights and spirits, and the author as well as object of divine knowledge, faith and worship, who only doth enlighten the minds and persuade and convince the understandings of the people; I do hereby grant and declare, that no person or persons, inhabiting on the province or territories, who shall confess and acknowledge an Almighty God, the creator, upholder and ruler of the world, and profess him or themselves obliged to live peacably under the civil government, shall be in any case molested or prejudiced in his or their person or estate, because of his or their conscientious *persuasion or practice*, nor be compelled to frequent or maintain any religious worship, place or ministry, contrary to his or their mind, nor do or suffer any other act or thing, contrary to their religious pursuasion."

Did this provision mean any thing or nothing? Could there be any doubt on the subject in the mind of any man? As to whether it be a part of the religious creed of the society of Friends, to bear their testimony against war and fighting, we are not called on to determine. There

was not any question of that kind before us. It would be found that at so early a period of our history as 1705, the Legislature of Pennsylvania did conceive it proper to secure the inviolibility of conscience to those who professed to be members of this society, as may be seen by the following extract from the law concerning liberty of consciences, passed in 1705.

"No person who shall profess and declare that they will live peaceably under the civil government, shall in any case be molested or prejudiced for his or her *conscientious persuasions*, &c."

Shortly afterwards, in the year 1718, this principle was carried still further by the Legislature, in the act for the advancement of justice, section 3, wherein it is enacted as follows:—

"All and all manner of crimes and offences, &c. shall and may be enquired of, heard, tried, and determined by judges, justices, inquests and witnesses, qualifying themselves according to their *conscientious persuasion* respectively, either by taking a corporal oath, or by the solemn affirmation allowed by act of Parliament, to those called Quakers, in Great Britain, &c."

Here again the Legislature recognized this principle. Here it would be found that one hundred and twenty years ago, the principle of conscientious scruples, regarding the taking of oaths, in reference to the Friends alone, or very few others, was scrupulously regarded by the Legislature of the Province, and embodied into laws which have continued to this day to be landmarks; nor need we confine ourselves to these instances alone. In every step in the formation of our government, the same principle is recognized. In the Constitution of 1776, we find it laid down, in the declaration of rights, as follows:

"That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and "understanding, and that no man ought, or of right can be compelled to "attend any religious worship, or erect or support any place of worship, "or maintain any ministry, contrary to or against his own free will and "consent; nor can any man who acknowleges the being of a God, be "justly deprived or abridged of any civil right as a citizen on account of "his religious sentiments or peculiar mode of religious worship; and "that no authority can or ought to be vested in, or assumed by any person "whatever, that shall in any case interfere with, or in any manner control "the right of conscience in the free exercise of religious worship."

Now, it was thus laid down that no man should be deprived of any right, on account of his religious sentiments. If he should fail to show that this conscientious scruple to bear arms, was a religious sentiment in those who belonged to the society of Friends, then his argument based on this declaration in the Constitution of 1776, could amount to nothing. But if he should succeed in showing that it was a religious sentiment, a part of the creed of this class of our citizens, then we must renounce all these principles which our fathers had laid down, if we refuse to respect it. The same principle is again laid down in the Constitution of 1790. At evey step thereupon we may trace the fact, that conscientious scruples against bearing arms in those who profess to belong to the society of Friends have been respected by those who have settled the government

of the Commonwealth. In the Constitution of 1790, we have the sacred principle established: "That no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry "against his consent, that no human authority can, in any case whatever, "control or interfere with the rights of conscience." No man therefore can be compelled to any particular form of worship, or to support any which he does not conscientiously believe to be right. The Constitution of 1790, contained no such clause as the present. Mr. D. here made a reference to the memorial of the Friends, to show that in its language it entirely harmonized with that of the charter of privileges, and that therefore no objection could be urged against it, to which the charter itself was not liable. To sustain that position, he read an extract from the memorial of Friends.

Now he would ask, what was the conscientious practice; what the conscientious persuasion of the society of Friends? He spoke in reference to the Friends alone, because his argument would equally apply to any other sect, or to every other individual holding conscientious scruples. If then every individual in the community, no matter how low his station, since this colony was settled, had been considered as deserving of such regard, and had been protected in his conscientious privileges and practice, were we now about to retrace our steps to those dark and barbarous ages when no human right was recognized, except the right of the strongest? He trusted there was no such disposition in this body. If there were any who entertained conscientious scruples, he hoped these scruples would be protected and respected, unless they should come in competition with the public safety. He made this exception, because he felt free to admit that the public necessity was superior to all law. Conscientious scruples, in times of public danger, must give way to public necessity. The principles of toleration which he had explained was not only to be found in the Legislative history of Pennsylvania, and in her Constitutional code, but in the Constitution of every State, even where the society of Friends were scarcely, if at all known, those who entertained concientious scruples had been exempted from military duty. There was but one instance to which he would refer, which would, he believed, convince the committee, if any thing would, of the propriety of continuing this principle of toleration. In Tennessee, where perhaps there was no such person as a Quaker known, it had been thought necessary, by a special provision in her Constitution, to make it imperative on the Legislature to exempt those who had conscientious scruples on the subject, from the necessity of bearing arms. The 8th article of the Constitution of Tennessee, contained this clause on the subject: "Legislature *shall pass laws* exempting citizens belonging to any sect or denomination of religion, the tenets of which are known to be opposed to the bearing of arms, from attending private and general musters."

Thus it would be seen that the Constitution of Tennessee did not even leave it discretionary with the Legislature, but made it imperative on that body to pass laws exempting from muster such persons as entertained religious scruples. This was going as far as any other Constitution had gone, if not farther. In many of the books he saw this principle of toleration recognized, although in our Constitution, it is coupled with a clause—a dark spot in our organic law—compelling the Legislature to exact an equivalent.

The Constitution of Maine, article 7, section 5, runs thus:—"Persons of the denomination of *Quakers* and *Shakers*, justices of the supreme judicial court, and ministers of the gospel, may be exempted from military duty, but no other person of the age of eighteen, and under the age of forty-five years, excepting officers of the militia who have been honorably discharged, shall be so exempted, unless he shall pay an equivalent, to be fixed by law."

Here the language makes it imperative, or at least holds out a strong invitation to the Legislature to make such exemption: but when such exemption is made, there is nothing said about an equivalent. Thus, Maine and Tennessee have adopted the same broad basis In Maine too, there were Quakers, and Shakers and ministers. Perhaps only the Quakers and Shakers entertained conscientious scruples. But it was not left at the discretion of the Legislature to inflict any equivalent. Most of the other States recognized the principle of conscientious scruples, but required an equivalent. It was not his purpose to go further than was proposed by the amendment of his colleague, (Mr. Bell) to exempt those who professed scruples from actual service, and from paying an equivalent in time of peace; and, in war, from personal service, but requiring the payment of an equivalent, because no scruples could then be permitted to interfere with the public safety. Look one moment at the equivalent required. What was it? An equivalent in time of peace, when only one or two days training was required! What did it amount to? He wished it to be laid down as a principle, that the conscientious scruples of individuals should be respected, unless some over-ruling circumstances rendered it necessary that these scruples should be disregarded. What were the services required in this case? To attend militia musters once or twice a year, under officers like the notorious Colonel Pluck. Are these the kind of services to be required of our citizens? The Commonwealth of Pennsylvania stands alone in the folly of her Legislature on this point. Did any one ever hear of an equivalent for standing in the street sholdering a corn-stalk? What was originally intended was that an equivalent should be given for actual service, when such service was required. The militia laws had, on this point, never been in conformity with the Constitution. The Legislature had exempted some in disregard to the provision touching conscience, and had made others liable to service. Never, until they came to the point of arming and disciplining the militia, did the Legislature strictly comply with the provision in the Constitution as it now stands. There ought to be made evident some positive good—some over-ruling necessity, before we ventured to violate the conscientious scruples of any man. Gentlemen had told the committee of the exploits of militia in Europe, as well as in our country. He was astonished to hear the army of the great Napoleon designated as militia. He believed it to be a fact that Napoleon himself had said that the militia were only fit to stop a bullet until the regular troops could be brought up to action. He had therefore heard with astonishment that the whole army of Napoleon was merely militia. But it was not his purpose to take away the merits of any. In his part of the country there were no militia, there was no military spirit. He would now turn to an authority which he considered to be as great as that of Napoleon with every American. Generalal Washington, in his letter to Congress, in 1778, in the midst of the war, used this language:

"To place any dependence upon militia, is assuredly resting upon a "broken staff. Men just dragged from the tender scenes of domestic "life; unaccustomed to the din of arms; totally unacquainted with every "kind of military skill; which, being followed by a want of confidence "in themselves; when opposed to troops regularly trained, disciplined "and appointed; superior in knowledge and superior in arms; makes "them timid and ready to fly from their own shadows. Besides, the "sudden change in their manner of living, particularly in their lodging, "brings on sickness in many, impatience in all; and such an unconquer-"able desire of returning to their respective homes, that it not only "produces shameful and scandalous desertions among themselves, but "infuses the like spirit in others."

Again, speaking of his preference for a standing army over the militia, he says:—"If I was called upon to declare upon oath, whether the militia "have been most *serviceable* or *hurtful*, upon the whole, *I should sub-* "*scribe to the latter.*"

With such evidence before us, he would ask, in the name of common sense, if to support such a system, the conscientious scruples of any of our citizens ought to be disregarded? Whether the right conferred by the Constitution ought to be violated to keep up an annual muster of men with corn-stalks? But it had been said by the gentleman from Franklin over the way, that if we open the door, we shall allow the worthless to shield themselves from the duty of serving their country by setting up conscientious scruples, and thus make room for the escape of all who are cowards. It would be a singular spectacle to present to the world an army of cowards and traitors who, if they could, would shield themselves under the plea of conscientious scruples. It had been uniformly the military practice to drum such characters out of the corps. The argument therefore, defeated itself. The gentleman from Luzerne, (Mr. Woodward) had also said that the gentleman from Franklin, had placed this question in a clear and unanswerable point of view. But was it likely that any one, merely to avoid the musters, would become a disciple of a creed which he did not believe, and affect scruples which he did not feel? Was there any evidence of many having had resort to such fraudulent means to avoid service in time of war? But supposing it to be true that if we tolerated the scruples of one, we should open the door to others. Such a result was barely possible, but, because a few cowards or traitors, or both, might possibly shield themselves under such a pretext, was such a trifling and doubtful evil to be allowed to weigh against the feelings and religious opinions of so large and respectable a portion of our fellow citizens? All partial evil should be made to give way to a positive and a general good. He did not believe that this would be an evil at all. He did not think that it would be found to be the case that any citizens of Pennsylvania would shield themselves under the plea of conscientious scruples, unless they seriously and religiously felt these scruples. It had been also said, that if we allow this exemption, it would be creating a privileged class among our citizens. But was this the fact? If so, your Legislature have already created a privileged class, because it is enacted that all who refuse to swear by the book may be allowed to affirm. Now was not this creating a privileged class? Why are they to be allowed, when called to testify on matters which involve life and

death, or important questions as to property, to evade the solemn form of an oath? Was not the exemption from this obligation erecting them into a privileged class? The only object now prayed for, was a proper respect for these religious scruples, which had been recognized and respected every where and at all times.

The gentleman from Luzerne had remarked upon a truism that, in time of peace, it was proper to prepare for war; and that it was also proper that taxes should be levied equally on all for the support of the war. He (Mr. D.) granted this position, that the tax should be levied equally; but had we ever heard of any individual in the community refusing, on account of his conscientious scruples, to pay a tax for the support of the government? No, it was not that this sect claimed any exemption from the ordinary burdens imposed on others. They had always been found among the best and most peaceable of our citizens; he would not say, they were the best. They were always ready to pay their due proportion of the burdens of the government. It was certainly true, that some of the money in the treasury might be applied to the purchase of arms for the defence of the country; but that money was levied by a general tax; it was not exclusively a military tax, and it was this alone to which they objected—namely, to levying a tax which was exclusively military—or to compelling them, against the scruples of their conscience to bear arms, either in time of peace or war, or to pay an equivalent for personal service in time of peace. This, and this alone, was what the Friends objected to.

On a view of the whole case, he hoped that the Convention would act on the broad principle of human rights, and with a liberal respect for the rights of conscience in others; because no man should claim for himself what he is not willing to grant to others. He hoped that the Convention, feeling the force of the amendment, would this day affirm by its vote the sacred principles which was to be found in every Constitution in the United States, recognizing and favoring the sacred rights of conscience.

Mr. Biddle said, that he probably owed an apology to the committee for again trespassing on their patience; but he trusted that that apology might be found in the deep and absorbing character of the matter under consideration. The question on which the committee was now called on to determine, was not a question at all perplexing in its character; it was simple, plain and unambiguous. It was simply this—whether in times of complete and entire peace, we should compel that portion of our citizens who entertain conscientious scruples against bearing arms, either to perform military duty, or to pay an equivalent for that performance. The question, then, was one resting on a foundation, which he confidently trusted, we should never disturb; that foundation which was the right of every man to worship Almighty God in his own manner and according to the dictates of his own conscience, uncontrolled and unmolested by any human authority. He proposed now to consider some of the objections and arguments which had been raised against this exemption. He should do it as briefly as possible. And, he should, in the first place, and, probably, almost exclusively, direct his attention to the ingenious argument which had been presented to the committee on yesterday, by the gentleman from the county of Luzerne. That gentleman had said, and indeed he possessed high authority for the remark, that in time of peace

it was proper to prepare for war. But he (Mr. B.) would ask, on whom did the duty of preparing for war rest? Had that gentleman forgot the peculiar character of our nation? Had he forgot that our government consisted of a General Government and a State Government? Was it not the Government of the United States which was invested, not only with the power, but with the duty of preparing for war and of protecting our territory against aggression? It had been well said by the gentleman from Allegheny, (Mr. Forward) that the General Government alone could declare war, and that all the immediate power in relation to that matter was the peculiar province of the General Government. Had we not yearly expenditures to fortify our harbors and to protect our western country? Was it to be proposed that the States should enter the field of competition against the United States, and here have a national force and there a Pennsylvania force? Was it proposed that we should go still further and raise troops? The Constitution of the United States forbids us. And was it now proposed that we should not only have frowning battlements and roaring cannon, but that we should also have a military array to garrison them? This it was in time of peace to prepare for war. It had never been intended that the whole yeomanry of the country should be taken from their peaceful pursuits, that they should be turned into the tented field, and there, with generals and all the array of military titles, that they should be made soldiers of; and simply for the reason that, at some future day, war might threaten, or an enemy might invade us; and, therefore, that the great portion of our lives should be spent as soldiers, to the utter disregard of all those charming and social duties of peace which make us good men and good citizens.

Then, continued Mr. B. the duty of preparing for war is the duty of erecting forts and raising and disciplining armies. The militia are intended for the spontaneous defence of the country; each man to stand forth from his house or his hut, to defend the one or the other—but it is not intended to be a trained force against a future, contingent, and probably very distant war. I think then, Mr. Chairman, that I have abundantly shewn that, true as it is that in time of peace we should prepare for war, still that that duty, by the happy organization of our government, complicated as it is, yet harmoniously and happily performing its different functions, belongs to the General Government—the General Government protecting us abroad, and the State Governments taking care of, and fostering us in the arts of peace—spreading intelligence, and knowledge and improvement among us, and uniting us together in one harmonious family. This government, thus harmonious and happy in its structure, has selected the General Government as the depository to which should be confided the power, in time of peace, to prepare for war.

But, Mr. Chairman, it has been asked, should any class of the people of this country refuse to pay a tax for a great public purpose? Should they enjoy the blessings which are diffused among us, and refuse to give back their poor pittance towards the maintenance and support of that government which bestows all these blessings upon them? Sir, it appears to me that the learned gentleman, in his ingenuity, has mistaken the nature of duty imposed on the militiamen. The law requires that they shall parade at certain periods of the year for a certain length of time, and that, if they do not comply with the requisition of this law, they shall pay a fine. But, sir, this is not a tax levied for general purposes. My friend

from Chester county, (Mr Darlington) had said with great truth, that there never had been a tax levied for general purposes which had not been most cheerfully paid by that class of our citizens who entertain these conscientious scruples. Probably no portion of our community has been more ready, not only to pay taxes and bountifully to pour out their treasure for the support of the government, but to promote good, and to ameliorate the condition of mankind in every form. Then they are not amenable to the charge of refusing to pay their portion towards the burdens of the government. But, sir, I assert again that this is not a tax; it is a fine, it is a penalty for not doing that which the law commands that they should do—it is like all other fines. We might as well say that a fine for an assault and battery was a tax. It is that which the law says they shall pay, for neglecting to obey the command of the law, and you might with as much propriety say, that any other fine imposed for the many numerous offences against the law, was a tax, as say that this partakes of such a character. It has not a single characteristic of a tax; it is a fine—it is a penalty. Let me ask then, does not the argument we have heard as to a tax, lose all its force? It is ingenious, however. Indeed the gentleman from whom it emanated never speaks without manifesting ingenuity; but we should not suffer ourselves, on this account, to be led astray from the plain matter of fact. Is the militia system itself a tax? If it is not, then neither is the equivalent for militia duty a tax. But it is said, it is a great privilege—the privilege of bearing arms—that it is a right which all have to defend themselves. If, then, it is a great privilege of freemen, surely it is not to be designated as a tax; and, if not a tax, how can its equivalent be called a tax?

I have thus endeavored, Mr. Chairman, to notice this argument of the gentleman from Luzerne; but he has proceeded further, and has entered into a learned inquiry whether the consciences of those who entertain these scruples, were enlightened consciences; or whether they are not ignorant, deceived or mistaken. Sir, are we prepared to constitute ourselves here, into judges of their consciences? The gentleman from Chester has truly said, that no man doubts their sincerity. That they are numerous we all know—that they are intelligent we all know. The gentleman from Luzerne and myself differ in opinion with this class of our citizens, and we are ready at any moment to be led into the tented field to defend our country. But, because we differ from them, are we to say that all the light is ours, and that they are groping in darkness, ignorance and folly? We differ from them and that is all that can be said. But let us not mistake our course; let us not exalt our standard above their's; and because they do not agree with us, let us not say that they shall yield their convictions to us. What is it? It is not giving them a privilege to protect themselves against wrong; it is an absolute command upon them to do that which they believe to be wrong. And would not we lose our respect for that society, if, after struggling so long for conscience sake through every difficulty and every trial, by any act of uncalled for oppression, we compel them to forsake their accustomed ways, and to turn from the paths of peace, or lay a destructive grasp on their domestic joys and social happiness. Then, sir, I hope that we shall not undertake to set ourselves up as the judges of their consciences.

But, it is said that this is asked of us by the Friends as a class. And, it is asked, shall we, in this land of equal privileges, set up one class with

privileges, which another class of our fellow men are not permitted to enjoy? And thus, Mr. Chairman, by attacking our prejudices, and by appealing to our feelings and our selfishness, we are asked to compel this body of men to do that which they believe they are forbidden by their Creator to do. But, sir, this boon is not asked by the society of Friends as a class; it is asked for every human being who believes that the Almighty has forbidden him to bear arms. It is, then, only recognizing in this Commonwealth of Pennsylvania, the principle that every man shall be entitled, not only in a place of worship, to adore God as he pleases, but in all the walks of life to carry out and openly to illustrate the creed which he professes openly at his altar. And, sir, is it for the people of this Commonwealth, at this late day, to deny this great principle? What was it impelled our ancestors to forsake their homes, to abandon their firesides, and the comforts and luxuries of European life—to cross the broad ocean and to come to this continent, which was then a wild wilderness of savages, where the war-whoop resounded in their ears? It was religious liberty; it was for that great blessing that every danger was braved, and every peril fearlessly set at naught. Then they believed it was their duty, and that the voice which commanded them onward, came from no human tongue; nothing could arrest their career—no tempest could appal them—the tomahawk lost its fears—they believed that the voice of God commanded them on, and they went boldly forward. Are these the principles which governed them? Look at the laws agreed upon in England before they left their homes. One of the great principles to which they there pledged themselves, was the following, viz:

"35: Law. That all persons living in this province, who confess "and acknowledge the one Almighty and Eternal God to be the Creator, "upholder and ruler of the world, and that hold themselves obliged in "conscience to live peaceably and justly in civil society, shall in no way "be molested or prejudiced for their religious persuasion or practice in "matters of faith and worship, nor shall they be compelled at any time "to frequent or maintain any religious worship-place or ministry what-"ever."

Then, continued Mr. B. the great doctrine which brought them across the ocean and peopled this Commonwealth, was the right of conscience, the right to live peaceably in a civil State without molestation on account of their religious principles. Are we, their descendants, ashamed of that great principle on which this Commonwealth was settled? Are we prepared to say that we will abandon the good old ways of our fathers; that they who came among the savages, teaching peace, not robbing them of their soil, but purchasing it, and teaching them justice and liberality—shall we, I ask, who are their peculiar descendants, declare at this time of day by a Convention of Pennsylvania, (if it should be ratified by the people) that this principle shall now be obliterated from our fundamental code?

Mr. Fuller said, he was opposed to the amendment, and also to the report of the standing committee. He was at a loss to conceive how those gentlemen who were friendly to the views of the society of Friends, could reconcile to themselves what they asked in this amendment. What did they ask for? They asked to be exempted from the obligation of bearing arms, or of paying an equivalent in time of peace. In time of exigency or war they asked for no exemption whatever. Now, if

conscientious scruples existed at all with the society of Friends, those scruples would most certainly be doubly urgent upon them to ask an exemption from all equivalent in time of war; inasmuch as the money accruing must be applied to repel force by force—and would furnish the means by which human life might be taken. In time of peace they ask for exemption when, as had been justly observed by the gentleman from Luzerne, the money would be applied merely in making *preparations* against any foreign invasion or insurrection. It was simply to *prevent* war; and although an attempt had been made by the gentleman from the city of Philadelphia, (Mr. Biddle) to show that this was not a tax, yet all fines and forfeitures went into the general funds to be used in payment of all necessary preparations for defence. Where then was the difference? Could there be any? Had the gentleman from the city of Philadelphia shown that there was any? But that which was most novel to him (Mr. F.) was, that these persons having conscientious scruples against bearing arms, and standing in the position of a privileged class, did not ask for any exemption in time of war. If they had conscientious scruples against taking human life, why not ask for an exemption at that time, when the money in the public treasury must, of necessity, be applied to such purposes. He presumed that would be inconsistent with what they had heretofore claimed, and with what they claimed at this time. When this question had first come up—when the society of Friends as well as another portion of the citizens of our Commonwealth, claimed a change in the Constitution in respect to the militia trainings—in order to meet them on a ground of compromise, and to settle a certain great fundamental principle of our State, that a well regulated militia should be organized, he had offered an amendment which was voted down yesterday. He well knew that it would be voted down, but still he had felt it to be his duty to place it upon record. By that amendment the militia was to be enrolled and organized; but the disciplining of them was left to the discretion of the Legislature. That, however, was not satisfactory. Yesterday, the gentleman from the city had preferred the words of the old Constitution. So also did he, (Mr. F.) They were admirably adapted to the purpose; they conveyed the proper idea, and *that* in terms so brief, yet comprehensive, that it was not possible for any man to misapprehend them. What were they? "The freemen of this Commonwealth shall be armed and disciplined for its defence." This was the whole matter, excepting that, in a subsequent paragraph were added the words, "Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service." How much preferable, continued Mr. F. were these words of the old Constitution, to the words which the report of the committee proposed to substitute.

The report of the committee, it was true, made it obligatory to enrol and organize the militia, and to discipline them when, and in such manner as the Legislature might hereafter direct. He was well aware that, if the report of the committee should pass, the Legislature would, in all probability, be beset, from session to session, with applications to prevent the disciplining of the militia. Applicants for this object (or as they were commonly called "borers") would swarm around the Capitol like locusts in the land of Egypt, and a great portion of the sessions of the Legislature would be taken up by this subject; and although these people were in a minority, it would yet be in their power to harass the legislative body

very much. It would be better, therefore, to make the language conclusive. Would any man state that, under the Constitution of 1790, the Legislature had not the authority to say, that a training of the militia should take place once a year, or once in five or ten years? He thought not. The Constitution was not binding, or imperative, in this particular; it was left discretionary with the Legislature; and we found from various changes made, from time to time, by the Legislature on this subject, that they never considered this provision as obligatory. In reference to those militia trainings, a great deal had been said as to the utility and the abuses of them. The worthy President of the Convention, had given us a doleful picture of the militia trainings; and speaks of the vice, debauchery, and all kinds of evils which result from them in the eastern part of the State, or, if the committee pleased, in the city of Philadelphia. But what did that prove? Did it prove that there was a deficiency in the system itself? He (Mr. F.) thought not. If it did, we might also complain that we found equal vice, disorder, immorality, and even fraud, at the polls on our election days. But was this any proof that the election laws were defective? If not, why meddle with them? Had it been pretended by any gentleman in this Convention, that the system under which we exercised the free right of suffrage at the polls was so defective, that it ought to be remedied or abolished? No. So far as his knowledge went, and speaking in reference to the militia trainings in the western part of the country, (the city and county of Philadelphia might, of course, be an exception) he would say, there was as much order and as much decorum observed, as on any other occasion where so great a number of people were congregated together. And, as had been well observed by another intelligent gentleman from the city of Philadelphia, if the militia trainings were not kept up in some degree—not merely by an organization of the men, but by actual discipline—the probability was that our volunteer corps would go down. It was the greatest stimulant to good behaviour in the volunteer corps, to have the militia contrasted with them. Much had been said as to the inefficiency of the militia, and the President of the Convention had stated that, in order to make efficient soldiers, it was necessary to put them in full practice, not only by drilling them, but by the actual practice of killing their fellow-men. He (Mr. F.) did not know that this was a necessary conclusion; but it was certain that a knowledge how to handle their arms, of military movements, in fact a proper training and discipline were essentially necessary, if called out to the defence of their country. And he would ask the honorable gentleman, or any other member of this committee, whether the militia could not be as well disciplined as the volunteers? Suppose the same inducements were to be held out to the militia, that were held out to the volunteers; would they not have an additional stimulus? The volunteer corps served only seven years instead of twenty-five—the period during which our citizens were subject to service in the militia. This, in itself, constituted a very great inducement. Give to the militia the same inducements, and he would answer for it, that they would be equal to the volunteers. The natural bravery of the militia was equal to that of the volunteers. Could uniform or apparel make a difference in the courage of men? All that was wanted to make the militia fully as efficient as the volunteers, was to give to them equal inducements. Another idea which had occurred to him with some force was this; that if the militia should be abolished—

and some gentleman here seemed anxious that such a step should be taken—the probability was that the volunteer corps would become something like a standing army in the Commonwealth. Could this be doubted when the advocates of the volunteer system, had urged the propriety of abandoning the militia, in order that greater aid might be given to the volunteers? What aid was intended to be given? Why, the intention was to pay the men for their time and equipments. This would place them almost on the same ground as a standing army, with soldiers regularly enlisted. It appeared to him that, if the militia system was to be done away, if the trainings were to be done away, and the volunteer corps was to be entirely relied on for the defence of the Commonwealth, it would be found impossible to dispense with the services of that corps at any time. They would have to remain in perpetual service. There would be no means of defence, except the volunteer corps, and to them we should have to look in every difficulty or emergency. If such a course was to be pursued, it would become necessary to increase the pay of the volunteers. The inducements must be increased in every way, in order to keep up the corps, and, by these means, they would in fact become as expensive to the Commonwealth as a standing army. They would be no more efficient, after all, than a well trained and well regulated militia, as appears to have been the opinion of those experienced men who passed the amendment to the Constitution of the United States, which declares explicitly, and in language not to be misunderstood, that "a well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." Could any man mistake this language? Was it not such as he had designated it, language too plain to be misunderstood? Did not all the gentlemen who heard him agree that, in the language of this amendment, a well regulated militia was necessary to the security of a free State? And the policy of the Commonwealth ought to be, that every man should keep and bear arms—that he should be considered as a citizen-soldier, because it is consistent with the very spirit of our Government, that every man should feel such a deep personal interest in it, as that he would be willing to shoulder his musket, at any time, and not leave it to his neighbor to defend *his* possessions, or the country which has given him birth. This was consistent not only with the Constitution of the United States, and with the act of Congress passed under it, but, also with both the Constitutions of Pennsylvania of 1776 and 1790. It conveyed clearly the idea set forth in the few, but expressive words of the present Constitution, which he had before quoted: "The freemen of this Commonwealth shall be armed and disciplined for its defence." This idea also had struck his mind with more force since the comparison which had yesterday been exhibited by the gentleman who had spoken on his right, and on reflection, he (Mr. F.) felt thoroughly convinced that the old Constitution was best adapted to convey the proper meaning. In reference to the remarks which had fallen from the gentleman from Chester, (Mr. Darlington) as to the inefficiency of the militia in the county of Chester, he (Mr. F.) would beg leave to inquire from that gentleman what degree of efficiency existed among the volunteers corps of that county. If he (Mr. F.) was correctly informed, there existed none. It was true the gentleman had stated that they lived in peace and harmony. So they might. But was this the condition of things in every portion of our country? The

price of human liberty was a continual, and never ceasing watchfulness; and every people who would preserve their liberty, must of necessity resort to it. The event, of which information had just been received—he alluded to the reported capture by pirates, off the Capes of the Delaware, of the packet ship Susquehanna—furnished us with ample evidence of the necessity of preparing for war, even in times of the most profound peace. We know not from what quarter a blow was to be expected, nor at what moment it might be given; nor at what hour we might be called upon to repel an invasion. In the instance to which he had adverted, there was not, as he understood, a ship or cutter prepared to follow and save the lives of our fellow citizens. And this would be the effect in every instance, if we adopted the notion that, in time of peace, it was not proper to prepare for war. In his opinion, one of the very best means of avoiding war was to be at all times prepared for its approach, and to let the world know that we were prepared. The very fact would frequently deter an enemy from invading our soil. Let us always be prepared—let it be known that we always were prepared; and, probably, by these means alone, we might avoid a war for centuries to come. Had proper measures been resorted to by the city of Philadelphia, to guard against such a possible catastrophe as the capture of the ship Susquehanna, he doubted much whether her capture would ever have been attempted. He should, therefore, vote against the amendment of the gentleman from Chester, because if he (Mr. F.) understood its purport, it was irreconcilable with that which the Friends themselves desired to have. If the Friends did wish an exemption from fines in time of peace, they wanted a further exemption—and that was, an exemption from the payment of an equivalent in money to pay men for killing their fellow men. If they wanted one, they wanted the other also. In the first case, no conscientious scruples can exist; but in the second case, the money was to be applied to a use which came in direct conflict with their conscientious scruples; and thus we were asking, in their behalf, for that which could not effect their conscientious scruples, whilst we passed altogether over that which appealed directly to those scruples. The Friends, as it ap-appeared to him, complained of a burden imposed upon them by the old Constitution of 1790; and all they asked was to be exempted from that particular burden. Was this all they wanted? If so, why not be satisfied when the objectionable clause was struck out? But gentlemen on his right and on his left, rise up with a further claim of a very strange character, and what was it? It was a claim not founded on conscientious scruples at all—it was a mere matter of dollars and cents. Conscience could have no concern in it. What! to claim exemption, in time of peace, from bearing arms or paying an equivalent therefor—and to be willing only in time of exigency or war to pay that equivalent, which they knew would be applied for the express purpose of taking the lives of their fellow men! This they were willing to pay for. Was not this the inference, and the only inference which could be drawn from the premises?

Mr. Darlington rose to explain. The gentleman from Fayette, (Mr. Fuller) had been incorrectly informed in some particulars. He (Mr. F.) was himself a native of Chester county; and the fact was that there were volunteer corps there as well organized, trained and disciplined, as any similar corps in the county of Fayette. The Chester county volunteers

had served during the late war. He (Mr. D.) would only add that the high spirit existing among them at this time, was not to be ascribed to the presence of any militia in that county.

Mr. Fuller resumed. He was happy to hear this explanation, as he was ignorant of the facts which had been stated.

Mr. Martin, of Philadelphia county, expressed his surprise at the character of the remarks that had fallen from the gentleman from Fayette, (Mr. Fuller.) It was his (Mr. M's.) intention to show, or rather attempt to show, before he resumed his seat, that he and those who advocated the non-compulsion of men to bear arms who entertained conscientious scruples against doing so, were consistent in every sense of the word. The application of the amendment now before the committee, was not to be confined to any particular class or set of men in the Commonwealth, but to men of all classes, who had conscientious scruples in reference to bearing arms. When a gentleman made any remarks which had a direct bearing upon himself, (Mr. M.) he certainly was entitled to say something in reply to them. He would then remark, as he had already done on a former occasion, that neither he, nor any of those whom he knew to entertain conscientious scruples on this subject, desired any exclusive privileges. They merely wanted that in a time of profound peace, no citizen should be compelled to bear arms, or to pay an equivalent therefor. When it should be in order, and he believed it was now, he would move to strike out of the amendment, the words—" Those who conscientiously scruple to bear arms," &c. and to insert in lieu thereof, that " No freeman of the Commonwealth shall be compelled to bear arms, nor pay an equivalent therefor, except in times of exigency or war." A large portion of the citizens of Pennsylvania had, within the last few years past, clearly and unequivocally evinced by the course which they had taken in respect to militia trainings, that they are not necessary in a time of profound peace. The gentleman from Fayette, (Mr. Fuller) remarked that we asked to be excused in times of peace, and said nothing about war; that this was evidence of our inconsistency, and that we entertaiaed no conscientious scruples. Now he, (Mr. M.) begged to say that we did not want these conscientious scruples to be brought into this clause in any way or form whatever. He had, on a former day, stated that the oppression, perplexity and misery, under which the society of Friends labor, was from a clause in the Constitution of 1790, exempting those from duty who entertained conscientious scruples in relation to bearing arms. Here, then, was the difficulty. A great deal of prejudice had been gotten up against them, and continued up to this time. It was said that because they were rich, they were not to be compelled to fight, and that the poor man had to fight their battles. Now, what the Friends desired, was to get rid of this charge—of the unjust imputation which rested against them. If the committee fully understood what was asked for, he was sure that they would not charge the Friends with requiring them to grant exclusive privileges. They neither desired nor expected any exceptions to be made in their favor. But would gentlemen tell him that the Friends were the only men who wished to be relieved from militia musters in a time of peace? He could assure the Convention they were not, and that it was the opinion of every reflecting man they should be abolished. Although there were many gentlemen here who well understood military tactics,

yet none of them had ventured to show that musters were of any benefit. Indeed, we had been told quite the contrary; and one gentleman, who had had some experience in military affairs, declared that there was much more trouble in getting a man to unlearn what he had learnt, than to learn what he should really know. He, (Mr. M.) would ask if this was not the opinion of the committee, and of the people of the Commonwealth generally? Why, he asked, in a time of profound peace, should we keep up an oppression—a practice known to operate as an oppression? After fifty years experience, not one solitary instance of good could be shown to have been produced by it. He had nothing to say against making it obligatory for men to be organized and enrolled—to be armed for their own defence. It was perfectly right that all free citizens should be armed for that purpose. Who doubted it? He did not think it necessary to occupy more of the time of the committee than to enforce what he had already stated in reference to the wishes of the society of Friends, of which he was formerly a member. He knew something of their sentiments, and that they wished to be relieved, as they thought their fellow citizens might be, no matter what might be their religious opinions—from attending militia musters on condition of their paying an equivalent. Mr. M. then moved to amend the section by striking out all after the word "law," in the third line, and inserting the following:

"No freeman shall be compelled to bear arms, nor pay an equivalent therefor, except in times of exigency or war."

Mr. PORTER, of Northampton, said he could not vote for the amendment. He thought that we were going too much into detail, and interfering with that which should be left to the Legislature. The object which he had in rising was not to make a speech, but merely to correct an error into which the gentleman from Fayette, (Mr. Fuller) had fallen, in relation to what the society of Friends asked for. They asked for an entire exemption, as a matter of right, and not of privilege, on the ground of the right of conscience, which was perfect and inalienable. The society required, not a partial, but an absolute release from bearing arms. The committee had now the subject before them, and they could not run counter to the requirement of the Constitution of the United States. No exemption could be granted, except in times of peace, and the committee was not willing to go farther. Now, this was not all that the society asked by the amendment under consideration; but it was all that would be granted to them. The chief purpose he had in view when he rose, was to state what was the view entertained by the society of Friends. If they should not get all they asked for, yet an exemption, as far as granted, would be a considerable relief to them, as all could not be demanded as a matter of right. So far as individually concerned, he stated, after having had a conversation with some gentlemen, that he supposed their advocates here would be satisfied if the clause should be stricken out, which operated oppressively. It seemed that what he had before said on the subject, had been misunderstood, but the misapprehension was corrected at the time by the delegate from the county of Chester, (Mr. Darlington.) His opinion, at this time, was that, perhaps, the object might have been obtained, by leaving the matter to the Legislature. Individually, he was satisfied that great practical good was to be obtained from the Legislature, by striking out the provision. He con-

fessed that he did not entertain that fear of the Legislature doing wrong, which some gentlemen appeared to feel. He (Mr. P.) did not imagine that his plain friends would be quite as formidable a band of borers as the gentleman from Fayette (Mr. Fuller) seemed to think they would. But he (Mr. Porter,) had not had so much legislative experience as some other gentlemen, still he did not believe that any member would permit any thing of this sort to operate on his mind, and induce him to abandon his duty at the solicitation of any body of men. The human mind, however, was differently constituted, and what operated on one man, did not on another.

Did we not find, although persecution had driven our ancestors from the shores of Europe to this country, in order that they might enjoy the rights of conscience—these very men denying to those who had followed them the rights of conscience. The Puritans of New England—men of as much purity, honesty and worth, as ever lived, when they landed on our shores avowed, that every Roman Catholic, or Quaker, who should be found within their bounds, should be put to death. Yet, we found the Roman Catholic Colony of Maryland, and the Quaker Colony of Pennsylvania, the first to proclaim religious toleration in North America. It was a singular fact, that those who fled for conscience sake, were the most proscriptive of any set of people that came to this country. His belief was that no sect who do entertain conscientious scruples themselves, would refuse to respect those of others. He was, therefore, not afraid that the Legislature would not respect the rights of the petitioners. For his own part, he was perfectly willing to leave the decision of the question in their hands, to decide upon it as they might think right. He did not wish the insertion of a provision in the Constitution, to dispense with militia training. The delegate from Fayette, (Mr. Fuller) had observed that if militia training should be put down, the volunteer system would likewise be extinguished. Now, what he (Mr. P.) wished to do, was to put it in the power of the Legislature to keep up such an armed force as circumstances might render necessary. He was for leaving the whole matter to the Legislature, who would, of course, adapt their legislation to the exigencies of the times. He confessed he was wholly at a loss to see the distinction drawn by the gentleman from Fayette, between the militia and volunteers, uniformed or ununiformed. He (Mr. P.) thought the term "militia," applied to every citizen soldier. In his judgment, the defence of the country should be committed to every man who did not entertain conscientious scruples to uniform and arm himself. We should then have a body of men who would act efficiently, keep together, and be of essential service in the time of danger. He had been told that an arrangement of this kind was adopted in some of the States. He would have every man, except those who had conscientious scruples, uniform himself. Let it be a uniform of Pennsylvania, so that when you go to any part of the State, you find the militia all dressed alike. Let every man, when he arrives at the age of twenty-one, uniform and arm himself in the manner universally adopted throughout the Commonwealth. If this were done, the volunteer system might be entirely dispensed with, because the whole community would be armed. He, himself, had not had much experience as a citizen soldier; but he had been in command of militia, and always found that a man dressed in a uniform coat, could be better drilled than if he were not. They learned their discipline much quicker, when in the garb of a soldier;

and they would not meet the charge of the beyonet, unless they felt that those along side of them were soldiers. This had been the feeling at all times. It was wholly immaterial what the uniform was, if the men were all clothed alike, even if they wore the grey roundabout which was worn during the last war, it would do equally as well as that which might be much more costly. He, however, found himself wandering from the subject. He would now conclude by saying that it would be better not to insert any thing in the Constitution rendering it compulsory to dispense with militia musters. The Legislature should be left free to act according to the exigencies of the times. If the militia must be mustered, let it be done once in three or five years.

Mr. M'Cahen, of Philadelphia county, said that when that blessed era should arrive, when peace would be proclaimed among all the nations of the earth, it might then do to turn their swords into plough shares, and spears into pruning hooks. It would be time enough then to adopt that course. The subject under consideration was one in which the consciences of men were deeply concerned; but his opinion was, that we should take special care that we did not, in our strict regard for the rights of conscience, violate and outrage the laws of humanity. He believed that nine-tenths of the world entertain no conscientious scruples against defending their country. While this, then, was the general feeling among mankind, it would never do for a single Commonwealth like Pennsylvania to declare that any of its citizens should be exempted from the patriotic duty of defending their soil. He maintained that it was the duty of every good citizen to protect his country in the time of danger. What had human law been instituted for, but for the mutual protection of communities? And how were they to be carried into effect, but by the acquiescence and assistance of every man? He contended that in peace it was good policy to be prepared for war, and that danger was less likely to occur when a people were prepared to meet it. The gentleman from Fayette, (Mr. Fuller) had fully illustrated this position by reference to the report of the packet ship Susquehanna having been captured by a piratical schooner. By way of argument, let it be supposed that the owners of that vessel entertained conscientious scruples against putting arms into the hands of the crew that they were without any; and that they, with all the passengers, should be murdered, would not the law of humanity interpose itself against these conscientious scruples? He thought it would. He conceived it to be a duty we all owed to ourselves—to the whole community, to provide the means of defence, and to exempt none from participating in it. Much had been said against the militia. It was true that in the militia trainings, there had been enacted many disgraceful scenes. And in that section of the State from which he came, the militia system was very unpopular. He knew that he should obtain no credit, if he were to attempt to defend what had happened. But, the truth was, and it ought not to be disguised, that it was not those who did attend the musters, but those who did not, who brought odium upon the militia, by paying liberally to get offensive officers elected. For instance, in the case of Colonel Pluck, who was not a man to muster, yet many who did not muster themselves, paid liberally to have him elected. He (Mr. M'Cahen) knew many who wished to get rid of the system, by bringing ridicule on it, who paid their twenty and fifty dollars each. But the militia had been spoken slightingly of by the President of this Convention, who

remarked that the people would as soon see Col. Pluck in the Constitution, as the militia. He (Mr. M'C.) would take the ground of the gentleman from Northampton, (Mr. Porter) and say that the militia would in future be found to be as it had been heretofore, the main stay and prop of the country. If history told the truth, the militia of William Penn had distinguished themselves by their bravery in defending their country. Who were those men who achieved the victory at New Orleans, but the Kentucky, Tennessee and New Orleans militia? It was they who beat the trained bands of Europe—men who had a hundred times bravely marched up to the cannon's mouth. Yes! these highly disciplined troops were defeated by raw militia. It was the militia, then, that had gained such immortal honors for their country. It had been a practice of the regular soldiery, as well as others, to speak contemptuously of the militia; but, in the time of war they did not use the same language. With regard to the digraceful proceedings which had grown out of some of the militia musters at Bush Hill, they only went to show the inefficiency of the civil law. It was the duty of those entrusted with the laws, to put them in force. And they ought to have put a stop to these iniquitous scenes, not by ridicule, but by doing what was adequate to the emergency. Other riots and tumultuous assemblages had taken place, relative to abolition, and the conducting of slaves to prison. Now, he would ask if these conscientious scruples of the peace-loving kind, respecting which so much had been said, had not had some agency in producing them? The ancestors of William Penn had gained the grant of land on which we reside, from their military ancestors. They took the wilderness at the price of blood, and were willing to take the soil, bloody as it was, to found a community of peace. The laws of conscience, and the operation of conscience, in individuals, was not understood. He approved of the language of his colleague, (Mr. Martin) that none should be compelled to bear arms in time of peace, but he did not think that such an amendment should be placed in the Constitution. He thought that we should be prepared for war in times of peace; and that the best way to keep peace, was to be always ready for war.—He hoped that neither the amendment, nor the amendment to the amendment, would be adopted. The recent circumstances that had occurred on our coast, ought to operate as a salutary admonition to us, and show that we should ever be ready for self-defence. That all our ports and merchant vessels should be defended, or rather, prepared for the means of defence, Every man should be a citizen, and every citizen a soldier; and then he would be best able to protect his country, and his own property.

Mr. Bell, of Chester, requested of the gentleman from the county of Philadelphia, to withdraw his amendmont, until the vote should have been taken on this amendment.

Mr. Cummin, of Juniata, said he rose to make a few remarks on the question then before the committee, which had once been solemnly settled, and now had, by some extraordinary circumstance or another, came up again for its decision. The gentleman from the county of Philadelphia, (Mr. Brown) had moved an amendment to strike out the clause excusing a man from militia duty on account of conscientious scruples, which was adopted by a vote of 79 to 23. How, he

asked, had the matter been brought up again, after being thus decided, but by the gentleman from Chester? That gentleman had introduced it as though the right which the petitioners claimed, or set up rather, belonged to them exclusively. Gentlemen had here said that there were many fighting men among the Quakers. He (Mr. C.) saw none here, but he had heard them make a good deal of noise. Gentlemen had misunderstood the grant of William Penn. They could not overthrow Holy Writ and the rights of conscience; for, the rights of conscience depend on Holy Writ. He fully agreed with his friend from Luzerne, (Mr. Woodward) who had remarked that there could be no rights of conscience against the government of a State. The gentleman from Chester, (Mr Darlington) had said much in respect to the charter of William Penn, as conferring upon the society of Friends what they were now seeking for. He (Mr. C.) maintained that there was not a particle of evidence to be gleaned from the instrument which would make out a case for them. He did not mean to condemn the speech of the delegate from Chester, altogether. He (Mr. C.) did not profess to be a classical scholar, but he had read several things in history, which were applicable on the present occasion. For instance, he had read of Rome being saved by the cackling of a goose. Now, literally, there was nothing more meant by it, than he conceived there was by Penn's charter, in reference to the exemption claimed by the Quakers. He had read of Coriolanus, who deserted Rome, and led the whole Volscian army against it, and a request being made by the ladies and matrons of Rome that Coriolanus would spare it, he gave way to the solicitations of his mother, and told her that she had saved Rome, but destroyed her son. Now he (Mr. Cummin) thought the gentleman from Chester, (Mr. Darlington) was in a similar position to Coriolanus, for he had tried to save the Quakers, while he had destroyed himself.

What right has any individual to claim exemption from military service? All citizens, of whatever class or country, are bound to take up arms against the public enemies, and to pursue and destroy them. I will not give gentlemen very fine language; but, sir, I will stick to the words of my text. In the original grant to Penn, from which he derived all his authority, he and his assigns are specially empowered to levy forces for the protection of the country from barbarous tribes, and from "pirates;" and, sir, one of our Philadelphia ships has just been taken by *pirates*, with some of these very non-combatant friends on board. I will read this passage from the 16th section of the charter granted to William Penn: "And because, in so remote a country, and situate near so many barbarous nations, the incursions as well of the savages themselves, as of other enemies, *pirates* and robbers, may probably be feared; therefore, we have given, and for us, our heirs, &c., do give power to said William Penn, his heirs, &c., by themselves, or their captains, or other officers, to levy, muster, and train all sorts of men, of what condition, or wheresoever born, in the said province of Pennsylvania, for the time being; and to make war, and to pursue the enemies and robbers aforesaid, as well by sea as by land; yea, even without the limits of said province; and by God's assistance, to vanquish and take them, and being taken, to put them to death, by the laws of war," &c.

How will gentlemen get clear of these clauses? Here are facts and principles which cannot be contradicted. Gentlemen have taken three

grounds on which they claim, for the friends, and others who have scruples, exemption from all military duty, or from paying an equivalent for personal service. In the first place, they maintain that all wars and fightings are anti-christian. In the second place, they claim that the example and precepts*of Christ, the divine founder of our religion, are opposed to war; and, third, they rest their claim upon Penn's grant of liberty of conscience to all citizens and inhabitants of Pennsylvania. Now, I can disprove all these positions against any arguments that learned gentlemen can bring to their support. I will read from the Charter of privileges granted by William Penn, and see what it says, and compare it with the claim set up in the Friends' memorial. "Because no people can be truly happy, though under the greatest enjoyment of civil liberties, if abridged of the freedom of their consciences, as to their religious profession and worship; and Almighty God being the only Lord of conscience, father of lights and spirits, and the author, as well as the object, of all divine knowledge, faith, and worship, who only doth enlighten the mind, and persuade and convince the understandings of the people, I do hereby grant and declare, that no person or persons, inhabiting in this province or territories, who shall confess and acknowledge Almighty God the creator, upholder, and ruler of the world; and profess him or themselves obliged to live quietly under the civil government, shall be, in any case, molested or prejudiced, in his or their person or estate, because of his or their conscientious persuasion or practice, nor be compelled to frequent or maintain, any religious worship place, or ministry, contrary to his or their mind; or to do or suffer any other act or thing contrary to their religious persuasion."

This is nothing more than a guaranty of conscience to all citizens in regard to their mode of worship. It says to them that they may worship the Almighty according to their own conscience, and exercise their religion without molestation; that they shall not be compelled to go to any church,—to conform to any mode of worship which they do not approve, —to build any house of worship,—or pay any tax for the support of any established religion. So far the grant goes, and no further; and this is as far as we can go, in granting to any sect the freedom of conscience. This is all that they can claim, or that we can grant. The 16th section of the royal charter granted to William Penn, makes it the duty of every citizen of Pennsylvania, to make war upon enemies, pirates and robbers, by land as well as by sea, and pursue them even without the limits of the province, and kill them. This charter makes every citizen a soldier. The argument of the gentleman from Chester was very able, but it was without foundation. We have an account of a master builder, who founded his house upon a rock, upon which the winds blew, and the storms came, but yet it remained unshaken upon its firm foundation; but it is related of the building of another man, that it was erected on the sand, and that it fell before the storm and flood, just as the argument fell which the gentleman from Chester yesterday raised. He said that the Friends had certain rights, and upon that assertion he went on to build without the foundation of proof and evidence. Again he would refer to their memorial, to show off what they claimed. They claim the right of "inculcating" their faith upon all men. What is the meaning of this word? I would ask the learned gentelman from Chester, if he was still

in his seat; and I am sorry that he is not, for I am opposed to all those principles which lead men to desert their posts.

Here Mr. C. read an extract from the memorial of the society of Friends, which, he contended, went to show that the Friends are not only bent upon relieving themselves from all military duty, but that they are determined to exert all their influence for the purpose of "inculcating" their doctrines upon others. They admonish all others not to perform military service, nor to pay an equivalent for it. They are not content with refusing themselves, but they encourage others to refuse to pay taxes. I took a book from the library the other day,—Gordon's History of Pennsylvania,—which throws much light upon this subject. When I went to obtain it again, I found that a gentleman had taken it out, and upon further inquiry, that he had mislaid it. So I cannot bring the book before you, but I carry enough of it, for my purpose, in this old brain of mine. This doctrine of "inculcating" their aversion to the defence of the country, upon others, they begun to practice at a very early, and in a very interesting period of our history. We may go back to the old French war, and shall find that the opposition of the Friends to the military system was then very conspicuous. They then opposed the preparations for the war, and endeavored to embarrass the province in its means of defence. The Friends, as they called themselves,—and they had done well to take that name,—and they may be friends to each other, —proved themselves, at that time, enemies to the government to which they owed all their safety and protection. When the colony was at war with the French and their savage allies, they "inculcated" upon those around them, and under their influence, the duty of withdrawing themselves from the public service. It was argued by the gentleman from Philadelphia, (Mr. Chandler) that they once had the government of the State, and that others came and rooted them out. This is true, and even for themselves it is well that it was so. During the French war, of which I speak, the assembly of the colony, according to Gordon, consisted of thirty members, twenty-seven of whom were Friends, as they called themselves, but enemies as I denominate them. They voted against the bill for calling out the militia, and against the bill for raising supplies to carry on the war, and to defend the colony,—to defend themselves and their own families and property. Twenty-seven of this family of Friends voted against these bills in a time of public calamity and danger, —in a time that tried men's souls. They were obliged, in consequence, to resign their seats, many of them, and the Governor called another set of men, who passed a militia law, and provided the means of equipping and supporting a militia force. Well, at this time, the Menonists had become a numerous sect. They would not fight, for they left enough of that behind them, in the country from which they came. They had conscientious scruples against fighting, as well as the Friends; and, for some time, they hesitated also about paying an equivalent. They, however, consulted with the Friends, and finally came to the conclusion, that if they did not fight, they ought to pay; and that, sir, was not a bad notion of the men with the long beard. But, upon their consultation with the Friends, what did the Friends say? They said—"If you establish a militia force, you will, in a short time, be reduced to the same condition of slavery under which you lived in the old world; and, if you pay for those who fight, it will produce the same result. It will

lead you into bondage." But what said the Mennonist leader? "If we do not fight, we think we should pay, because we must support the government under which we live, and by which we are protected." The advocates for this exemption, tell us that Christ, by his example, discouraged war. But what said Christ to Peter? The tax gatherer came to Peter and said, Peter, does your master pay tribute to Cæsar? And Peter, in a great flurry, answered "Yes." And when the Saviour himself was applied to, was not his reply—"Render tribute to whom tribute is due."

I should like to know what the memorialists make of this? Will they say that Christ rebelled against, or refused to support the government under which he lived? Does not this government depend upon the payment of taxes? And is not the payment of taxes the very sinew of war, as the gentleman from Luzerne, (Mr. Woodward) so ably argued yesterday? If one refuse to pay, all may refuse, and the country and government be left without any support. Never was there a claim made in the whole world so unreasonable as this—to be exempted from a fair proportion of the public taxes. No learning can dispute this, and any argument against the payment of taxes, I can meet with the aid of this book, which was dictated by divine wisdom.

I am surprised, sir, that gentlemen of so much learning and ability, should fall into so great an error in relation to the character of Penn's grant. It was, as I have shown, a grant of religious freedom, and not of freedom or immunity from the support of the government. Why should we create an odious distinction in society? Is this consistent with the principles of our institutions? How was it in Montgomery county, where the doors of the houses showed the holes through which the cannon balls passed? Those marks showed, to this day, how they were treated.

In a national question, we should not be so tender of scruples as of our national power and safety. Here gentlemen know this very well. They are convinced that they are wrong; but they adhere to their position, because they wanted the ascendency. But it is said there have been fighting men among them. So far, they are deserving of credit. I remember one of them, William Beale, whose name is spread through my part of the country. He was a native of England, and he fought the battles of freedom in this country, during the revolution. He was turned out of meeting for it; and it is in this way that they always rebuke the spirit of freedom and patriotism.

I have now said enough, sir, to show that the prayer of those people is an abomination. War, sir, far from being hostile to the laws of God, is in conformity with them. We have all seen in the Scriptures, that the greatest men, and the men most after God's heart, were warriors. The Lord of Hosts overrules all battles. To his guidance and protection, we owe all our victories; both in the late war and in the war of the revolution. Washington was a christian. He appealed for divine assistanc, and obtained it, and he succeeded. Who will say that General Jackson, with his handful of militia, was not guided by the Lord of Hosts, when he put to flight the British army at New Orleans, with great slaughter, and with the loss of only seven men on his part? The same providence is extended over the affairs of mankind now as formerly.

This sacred volume of inspiration is now closed, but the workings of providence, in the affairs of men, are still the same. They are the same now, that they were when Abraham, by the appointment of Jehovah, with his three hundred and eighteen militia, subdued the four kings. No nation can expect to enjoy either liberty, or prosperity, or happiness, but by the means of divine appointment. I have shown how he directed all the operations of the army of the Israelites—how he instructed them in the knowledge of war, and strengthened their hands for the conflict—how he encouraged them in the fight, and bade them not to be discouraged. I am sorry these points of doctrine are not more familiar with gentlemen who advocate the exemption of men from military service, while they claim to be the children of the Prince of Peace. What is the duty of subjects, but to obey? And are those gentlemen obedient to the plain doctrines and instructions of his law? The Lord of Hosts has given us his commandments to go by till the time of his second coming. He left us baptism as an introduction to his church; and, in his last hours, before he was taken prisoner, he broke bread and drank wine, and bade his followers to do the like in remembrance of him. But do not the Friends renounce and deny these several ordinances? I have a right to refer to this point of doctrine, since they claim to be the followers of the Lamb—of that Jehovah, who, in righteousness, maketh man. With the inspired writer of the epistle to the Hebrews, who recounts the deeds of the great followers of the Lord, I may exclaim: "What shall I say more?"

What shall I say more? For the time would fail me, to tell of Gideon, and of Barak, and of Sampson, and of Jepthah, of David also, and Samuel, and of the prophets. The sacred volume, however, is full of the recitals of the battles fought by the servants of the Most High, who, through faith, subdued kingdoms, and wrought righteousness.

With them, Mr. Chairman, I leave you; hoping that the report, as amended, will be agreed to, and that the freemen of the State of Pennsylvania will be always armed for her defence, and ready to smite her enemies with the sword of the Lord and of Gideon.

Mr. Sturdevant, of Luzerne, said he was desirous that every feature of the present Constitution should be retained unaltered, unless where it could be manifestly improved. All the propositions which had been brought to the notice of the committee in regard to this subject now before it, were to his apprehension, objectionable. The report of the committee as originally made, and as it stands, since it was amended, on motion of the gentleman from the county, was exceptionable, and it appeared to him that the proposition of the gentleman from Chester, was still more so. He could not vote for the amendmeat of the gentleman from Chester, because it struck at the root of our militia system; a system which has long been in operation here; which has sustained us in the day of trial, and the hour of battle; a system which we had seen much cause to venerate, and which he should be the last man here to destroy or impair. This system, whether it was ridiculed as a corn-stalk system, or lauded as the bulwark of our defence, he could not consent to abandon. He regarded it as necessary to the safety of the country. He could not look back to the days of Lexington, and Bunker's Hill, and of the many glorious battles of liberty in which the militia have been engaged, with-

out the reflection that we owed our present prosperity and glory to that very militia. He could not think of taking from the Legislature the right of acting on this subject. He believed that the volunteers—and the volunteers were, as it had been said here, only the militia—were dependent for their existence upon the continuance of the militia system. When we do away with that, we shall do away with and destroy the volunteers. He could not therefore consent to take away from the Legislature the right of legislating on this subject. He felt that the militia were our constituents, and that they were entitled to be treated by us with the highest respect. He felt that, in time of peril, we have been dependent on them, and that, if, ever again, we should be called upon to defend our rights, we must again rely upon them, as we did in the late war and in the war of the revolution. He could not vote for the amendment of the gentleman from Chester, because it conferred an exclusive privilege upon a particular class of our fellow citizens, and one which we would not dare to extend alike to every citizen of the State. He would not recognize their claim to exemption as a right; and though he would go as far as any to protect all men in the right of worshipping God after the dictates of their conscience, yet he would go no further.

He would not say to his neighbor who was of a different opinion with him and who held to a different faith, that he should be excused not only from being armed in defence of his country, but likewise from paying an equivalent to defend that country. He could not say to any class of men that they should receive protection from a government, while they were relieved from paying an equivalent for that protection. He looked upon this equivalent required to be paid under the existing Constitution as a tax, and to ask to excuse any class of persons from the payment of this equivalent, was absolutely and in fact asking that a portion of our citizens should be exempt from the payment of a tax which goes like all other taxes, directly into the treasury of the State. You will find by the act of the 11th of April, 1825, that all funds, collected as militia fines are directed to be placed directly in the treasury. The third section of that act provides "that the brigade inspectors, and persons appointed in the place of brigade inspectors, as aforesaid, shall keep an accurate account of all moneys received by them for the fines aforesaid, and shall annually in the month of January, in every year, settle with the Auditor General, who is hereby required to adjust their accounts, and shall pay into the State treasury any surpluss arising from said fines."

These fines therefore, are a species of taxes which go directly into the State treasury, and are precisely on the same footing of other taxes. Now how can the society of Quakers ask us, on account of their conscientious scruples, to protect them from the payment of these taxes in time of peace, when they are not only willing to pay them in times of exigency and war, but to go into the battle field, as some gentleman has asserted.

They are willing to make their payments in time of war, and fight the battles of their country when it may become necessary, yet they ask us in time of peace to exempt them on account of conscientious scruples, from paying a tax which goes directly into the treasury of the Commonwealth. It appeared to him that gentlemen were asking a very great deal when they asked of us to exempt a class of our citizens, who received equal protection from the government with all our other citizens, from

contributing their portion of the taxes necessary to be contributed in order that we might in time of peace be the better prepared for the hour of trial and difficulty and danger. If you take away the arming and training of the militia, you deprive them of gathering the little information which they pick up on those occasions, and when they are called into the field they are totally unfamiliarized with the use of arms, and are wholly incompetent of performing service to their country. If they are not permitted to meet and train, their services will be of little avail when they are called into the field. Then, as to this matter of conscientious scruples, the moment you allow these scruples to protect men from attending these trainings, or or paying an equivalent, that moment it extends over the whole Commonwealth; for, what man is there whose conscience would not help him out in a matter like this, in time of peace, however brave he may be in the day of battle. There are but few who would not take advantage of this provision in time of peace, and as "conscience makes cowards of us all," many might avail themselves of it in times of danger. There are but few, as he had said before, who would not take advantage of this provision in time of peace, and how would your Legislature make provision for such emergencies as they might see arising. A large majority of your citizens may be conscientious both in bearing arms and contributing money, so that the hands of the Legislature would be tied, and the storm of war would be upon you before the sinews of war were prepared to withstand it. If it is a fact, as has been asserted by some gentlemen in this debate, that the Quakers would be the first to shoulder their musket in defence of their country in time of invasion, why was it that in time of peace they were desirous of sheltering themselves behind conscientious scruples, from paying that small remuneration, which was required of them by the government, to enable it to prepare for those emergencies. He differed with the gentleman from the county of Philadelphia, (Mr. Martin) as to the manner of preparing for war in time of peace; that gentleman seemed to suppose that preparing for war in time of peace was raising fortifications, collecting arms and ammunition and training troops, and taking all other preliminary steps towards preparing for actual service. This was not the kind of preparation which he expected to see in a time of profound peace; what appeared to him to be a reasonable preparation for war in time of peace, was placing in the hands of every citizen the necessary implements of war, and familiarizing them with the use of those implements, so that they might be able at once to use them effectively in the field. This was the kind of preparation which he desired to see. But can it be said by gentlemen, that men can be made familiar with arms in the course of a few days? Certainly not. Again, can it be expected that men will go and learn military tactics, losing some three or four days in the year, at an expense of perhaps fifty dollars, to support a system which their more wealthy favored and conscientious neighbor is entirely free from? If this was not to be expected, and certainly it was not, he thought we ought to be exceedingly cautious in altering the old Constitution in this particular. It is a Constitution under which we have lived happily for a long time. It is a Constitution which many citizens of the Commonwealth are satisfied with; and it is a Constitution which we should preserve inviolate, unless we can improve it. Unless we can return it to the people with judicious and

salutary amendments, let us preserve it in its original form. Don't let it be said of us that we came here to make amendments to the Constitution; but instead of making amendments to it, we have torn it to pieces. He was opposed to all the amendments which had been offered to this section, and he was opposed to all alterations of it, unless gentlemen could convince him by cogent arguments, that we would be bettered by the change. He should hold himself open to conviction; and he should be glad if any gentleman could explain to him why we should make any alterations in this section. The moment they did so, he would go with them, but not until then. With these views, which were more extended than was his intention when he rose, he would leave the question to the committee, not intending again to trouble it with any remarks of his own, on any questions except such as he believed the people took an interest it.

Mr. Bell rose to ask of the gentleman from the county of Philadelphia, (Mr. Martin) to withdraw his amendment, so as to enable us to have a vote on this question.

Mr. Martin, thereupon withdrew his amendments.

Mr. Bell said he had been asked by some gentlemen to modify his amendment, so as to make it more conformable to their views, and accepting of their suggestions, he modified his amendment to read as follows:

"Those who conscientiously scruple to bear arms, shall not be compelled to do so, nor, except in times of exigency or war, to pay an equivalent therefor."

Mr. Forward would beg the indulgence of the committee, for a few minutes, while he laid before them some of the views which he entertained on this subject; and he did it in obedience to a duty which he felt that he owed both to himself and his constituents. It had appeared to him on this question that we have been wandering about without exercising much talent or much ingenuity, for the purpose of discovering the principles, if there be any, on which this question ought finally to turn. It is but a question of toleration; to what extent shall the conscientious opinions of men be tolerated; how far shall the liberty of conscience be conceded? That was the question. Then, is there one common principle to which we all yield assent, that will aid us in our inquiry on this subject, one common ground on which we can all stand and discuss this matter? Why he thought there was, and he thought that principle to which he referred, had been alluded to, though not pressed by others who had gone before him, and he thought it was virtually conceded by almost every gentleman who had taken part in the debate. Sir, when men come into society and are parties to a compact or government, it is obvious that they must surrender some of their natural rights, otherwise government could not be organized, and if organized, could not be held together. What are the natural rights of men, which must be surrendered, and what may be reserved consistently with the stability and safety of the government—What is the right of conscience? Is it a right, which must be surrendered up to the government, on entering into compact with it? No sir—it is a natural right which is reserved to the citizen, one which he never surrenders to government, one which he holds to, in all forms of government, and never gives up. Is liberty of conscience a natural right? Who denies it? Then is it open now for discussion? Liberty of con-

science was not denied by any body, to be a natural right; this was conceded on all hands. Then why do gentlemen not trace to the sources of this right, and see what it is? Why it is the right of worshipping God, as every man may see fit, and this right is not to be infringed in this country. We call it a natural right, because men acknowledging the Supreme Being as their ruler and guide, hold themselves accountable to him in certain respects, and when they do this, they feel that they owe a duty to that Being which cannot be dispensed with. This is the right of conscience. Is this then not to be tolerated? When men feel that there are obligations and duties which they owe to their Creator, which are paramount to all others, is it to be said that this shall not be sanctioned by government. Is there a doubt on this subject, as to what all should do. When men believe in the Supreme Being, are accountable to Him, believe Him to be the moral Governor of the Universe, or take his revelation to be the guide of their conduct, and believe it a part of their duty to obey his behests as they understood them; will any man say that this is not the right of conscience? Does any man doubt it? Is not this the same as the right of worshipping God according to the dictates of conscience? The whole matter rests upon the fact of a man's acknowledging the Supreme Ruler of the Universe, as his guide, and refusing to do any thing which he believed was not approved by that being.

The right of conscience in relation to bearing arms is a sacred right. It is equally sacred with that of the right of self-defence. They were both equally high and sacred rights, and when he heard gentlemen stand up here and call this liberty of conscience, a privilege, he was astonished. If he understood some of the gentlemen who had spoken on this subject, they called it a privilege and hesitated whether it deserved the name of a right. While speaking of those rights which we are required to yield to a certain extent to the government for its perpetuity and safety, he should like gentlemen to show him the necessity for yielding this right; could gentlemen show wherein it was essential to the existence and perpetuity of the government to yield this right. When he was called upon to yield any of his rights he wished gentlemen to show him some reason why he should yield them. Show him that it was necessary, show him that the government could not exist without it, and he yielded the right. He had a natural right to self-defence, but he yielded that right in certain cases, and why? Because the government could not exist without it. The sheriff came to him with a capias, and laid his hand upon his shoulder, and perhaps might take him to prison, and unjustly too, and he had to yield to this, because civil society and the government could not be held together if every man had the right to rebel, and not obey the officers of the law. There must be a common arbiter in society, and every man must yield to that arbiter. He may have been perfectly innocent of the charge brought against him, he may have committed no crime, he may have owed no money, and the man who brought the suit may have been the villain; yet, notwithstanding his innocence, he might be arrested and taken to prison, and he was obliged to submit to this, because the government and society demanded it at his hands. He must yield his natural right of self-defence, otherwise he would have knocked down the officer, or repelled him from his house by force. This was the ground on which this matter stood. He found a class of men in the community who believed in God, and believed that they owed a duty to God para-

mount to all other duties. They believe it is their duty not to bear arms, and they owe it as a duty to the God that made them, not to do so; and that if they do this they will be accountable at the judgment seat of heaven; it is blended with their hopes and their fears, with those hopes of enjoyment which lie anchored beyond the stars. This has been the belief of these people from the foundation of the government to the present time, and all their acts show it; then why should we be asked if this right was to be allowed them, which is here asked for? Are we to step in between these principles and the throne of God and resit his claim upon them. He for one would not do it, unless some imperious and high necessity could be shown to exist which required that this natural right should be given up. He hoped now that those gentlemen who were scrupulous about their indulgences to the society of Friends, and had addressed the Convention on the subject, would meet on this principle. Let them come up to the mark and deny that this was a natural right. If they did so, he called for the proof; they must prove that it was not a natural right, and if they failed in that, they yielded all. If they failed all was yielded, and the right must be sustained, because it was sacred; and he would ask any christian community on earth where toleration was practiced; he would ask any individual in the country; he would ask the atheist who had no God, if any such there are, whether it was not our duty to grant this claim to all who sincerely asked it. It is as plain as day, that there is a principle in this thing—it has been acknowledged in the Constitution itself, and in the Constitution of 1776. This principle was then acknowledged when our soil was stained with hostile blood; when the country was agitated by fear, and all were ready to acknowledge that there was a Supreme Being, to be looked up to. The principle was acknowledged in the Constitution of 1776, as follows: "No part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representatives; nor can any man who is conscientiously scrupulous of bearing arms be justly compelled thereto, if he will pay such equivalent." Sir, the right is sucured here and they are left merely to pay the equivalent, In Tennessee it is regarded only in time of war, and in Maine the Constitution provides that the Legislature may exempt these classes. But, he recurred to the principle and he desired that it should be yielded, except in case of imperious necessity. If that ground was established and proven, he yielded the matter. This matter had been argued in regard to certain facts, which had been brought to the notice of the committee. Then taking it on this ground, what were the facts of the case, what necessity was there to call upon these men to surrender up their natural rights? The militia trainings. There is the necessity, and the only necessity for it. Let this matter be expatiated upon; let it be examined and see whether they are of such great importance as to demand the surrender of a right like this to them. Are the militia trainings in time of peace of that importance as to require the surrender of a part of a man's natural rights? Why, the matter was yielded—it was given up. It was given up by the gentleman from Fayette, that they were not of such importance. The whole of the gentleman's argument went to yield the point.

Mr. Fuller explained. What he said or intended to say was this: that, by the amendment, the Legislature were privileged in the matter,

either to keep up the system, or abolish it, as they saw proper; yet all his argument went to show that it ought to be kept up continually.

Mr. Forward resumed. He did not misunderstand the gentleman. He said that the gentleman had yielded the principal point as to the necessity of keeping up these militia trainings, and he apprehended that he would not fail to show the committee before he got through that the gentleman had yielded all. In framing a Constitution to meet certain cases, are we to stand on practical grounds, or on that which is imaginary and fanciful? Are we to look to circumstances as they are, or as they actually may be in reality, or are we to fly to visions and dreams? Now what were the facts—what were the actual facts in relation to the militia? He put that question to gentlemen. Are the militia musters as now conducted, as now instituted and carried on, of the slightest service to the country? Are they necessary to the safety of the government? Are these precautionary measures necessary for the public safety? Has the gentleman from Fayette and other gentlemen, not conceded that this is not necessary, and that the militia trainings are useless, except that keeping them up has a tendency to drive men to join volunteer corps, to get rid of turning out in the militia. This system was kept up to be contrasted with the uniform volunteer corps to act as a stimulus upon them. In other words the volunteers were to be made up of all the respectability which would be drawn from the militia troops. These persons were to be brought out to the public gaze and contrasted with the volunteers for the purpose of keeping them up. Was this all the militia system was worth preserving for? He need not enlarge upon the fact noticed by others, that militia trainings were universal objects of contempt, and his object was to secure them from the stigma which had been cast upon them in consequence of their disgusting parades, and nonsensical exhibitions. It had been said those who were in favor of abolishing the militia trainings undervalued the militia. This was not the case. We estimate them, acknowledge their merits, but we do not believe that militia trainings, as at present conducted, are in any way to be looked upon as preparing the country for defence. It is a farce to say that these corn-stalk exhibitions shall be kept up for the defence of the country, and he wished to relieve those who were compelled to take a part in there exhibition from doing so. These gentlemen who agree in favor of this system may say that it will hereafter become respectable. This, however, was not the case now; that was his argument and he was to act by what he saw before him and not upon what any gentlemen may imagine will happen. He wished to say one word more in relation to these militia trainings. He remembered hearing an officer of the regular army say, and no doubt other gentlemen had heard the same remark, that it was really a disadvantage for an enlisted soldier to have ever served much in the militia—because it is neceseary for him to unlearn all that he learned there. He must unlearn the whole of the exercise he learned there, if he ever learned any. He must unlearn the negligence and habitual insubordination he has there been accustomed to, before he is fitted for service in the regular army. To get rid of the habits of insubordination, which he has imbibed at militia trainings, is one of the most trying circumstances attending the drill of a recruit who has served much in the militia. Then were men to be brought out and subjected to this ridiculous exhibtiion without any benefit to be derived from it? Were the citizens of Penn-

sylvania to present this spectacle of ridicule once or twice a year? Was it to be said for a moment that your citizens would lose all military spirit unless they were subjected to this childish parade? Besides men contract habits of insubordination there, which it is almost impossible to break them of, if they are afterwards called into actual service. It is vain —it is utterly useless to think of disciplining the freemen of our Commonwealth at our militia trainings. Well it was these militia trainings he was speaking of, with all their evils. He had said they were of no use, and he repeated that they were of no use. But what is meant by our militia. Why, when he spoke of them, he meant American citizens accustomed to the use of arms; not in the camp or in the field, but American citizens accustomed to use their arms, and to all that manual dexterity which could only be gained by long practice; not field manœuvering and marching, but a perfect knowledge of the rifle and the musket —such a use of the rifle that you can take the eye out of a squirrel on the highest tree. This was all in all, and beyond this there was no necessity to go in this country. In this, the soldiers of our country had a superiority over those of any other. Ask the British officers who were engaged in the last war whether there was no superiority in our troops in this respect. Well, was this to be learned at militia musters? Let any man speak who had attended militia musters, and say whether he ever attained any military knowledge there. He would appeal to any man to say whether he would not in a week or three days steady drilling, obtain more military information, than at all the militia trainings he had attended for a series of perhaps twenty years. There could be no doubt of this. But when it is necessary, the American citizen is always ready to bear arms without these militia trainings. How was it before the last war in this State? Were there any militia trainings to make the citizens of Pennsylvania prepared for service? Not at all—but they were ready to meet the enemy in the east and in the west. How was it in Tennessee before the battle of New Orleans. Did the men who fought that battle perform militia service to prepare them for it? No sir—it was known that they did not. Were the militia of Bunker Hill, prepared for the events of that day of glory by previous trainings as militia? No sir. The gentlemen who had argued this question had treated it as though war would come upon us like a thunder-bolt from a clear sky. They have been endeavoring to provide for emergencies which may not arise in a thousand years. They say that when war comes there will be no time for calling out the militia; they say that the militia must go from their homes to the field of battle. Now, sir, practically speaking, this is all absurd. Do you expect in this State which is an interior State, that a war can be brought upon us in a day, and that the militia will not have timely warning of its approach, so that they will not have ample time to be enrolled and organized? Do you expect thus suddenly to be thrown into a war? Why, no man can expect this. It is mere dreaming—indulging in the wildest imaginations, which never can come to pass. He contended that these persons who were for providing for all these extreme cases, were merely consulting visions, and not the actual truth and facts of the case. This was his argument; now let them meet it by showing these militia musters were or could be essential to the defence of the country.

There was another topic which must not be passed over. What

do gentlemen mean when they ask if we are to have a privileged class, an aristocracy in the country. Now, he would return this by asking of them what they would have in relation to this militia system. They say we must not put down the militia system otherwise the volunteer system will fall. You must then keep up the militia as a contrast to the volunteers; you must disgrace one class to keep up another: you were to degrade one class and march them through the streets to the derision of the mob, that another class of persons may have the glory of being more noticed by the public. Now, he was utterly opposed to this thing. He had no idea of becoming a part of this foil to the volunteers, and of being a part of a disgusting exhibition which was to be kept up for the purpose of ministering to the glory of another class of persons. He had no idea of having an exhibition of cornstalk boys kept up to be hooted at by the boys and the blackguards in your streets. In what he was now saying, he was contending for the militia, he was desirous of freeing them from this painful exhibition. He knew their value and fully appreciated their services. He was addressing the Convention in their behalf, and it was for them that he asked they might be relieved from performing this unpleasant and utterly useless service. Mr. F. then gave way to

Mr. MEREDITH who moved that the committee rise, which was agreed to; and,

The Convention adjourned.

WEDNESDAY AFTERNOON, OCTOBER 25.

SIXTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. CHAMBERS in the chair, for the purpose of considering the report of the committee to whom had been referred the sixth article of the Constitution.

The question pending being on the amendment offered by Mr. BELL, which, as modified, reads as follows, viz: "Those who conscientiously scruple to bear arms shall not be compelled to do so, nor, except in times of exigency or war, to pay equivalent therefor."

Mr. FORWARD resumed his remarks: When the committee rose in the morning, he was adverting to the condition of the militia, and distinguishing between those who were its real and its mistaken friends. He did not believe that those who were enrolled into the service would feel any mortification at being relieved from ridicule and ignominy. He put it to gentlemen whether there was any disposition among those who were called out to go through these idle and disgusting exhibitions periodically? Was it not admitted to be a degrading service? Was it not looked upon as a frolic, a burlesque? Was not this the case in Phil-

adelphia when a celebrated colonel (Pluck) was put at the head of a regiment of militia? Was not this the feeling of the militia themselves? We then were not throwing any imputation upon them. Who are they? Are they not our friends—our neighbors—ourselves? He had no disposition to under value the militia. Nor could he agree that in abolishing militia musters it would be necessary to abolish the militia. The extent of his argument, as it had been conceded on all hands, was that the system might be improved, and that the drowning honor of the militia should be plucked up by the locks. What did the gentleman from Fayette, (Mr. Fuller) say? That the volunteers would put down the militia. Another gentleman had said that if the militia had the same pay and equipments, they would be as good as the volunteers: that is, do as much for the militia, as you do for the volunteers, and the militia will be just as good. What was this but an admission of the whole argument? What said the gentleman? Let there be voluntary service. The gentleman himself looked to voluntary service, and the whole of his reasoning made out the argument that on voluntary service alone we could rely. All seemed to agree that to induce men to enrol in the militia, volunteer service should be encouraged. What seemed to be objected to was that conscientious scruples were not violated, to do what was called justice to the militia. The whole argument, therefore, was yielded, when it was admitted that without the volunteer system, the militia would be imperfect. There could be no reliance but on voluntary service. On what other could reliance be placed? Would you rely on any body which would be likely to shrink from duty? He might differ from gentlemen on this point, but he thought the reluctance, the refusal to serve which accompanied the militia system, must always render it inefficient in time of danger. Suppose an enemy threatened the country, it might be said would there be voluntary force sufficient to repel the invader? Any one who was acquainted with the history of the last war must believe that there would be sufficient offers. Would it not be adequate, more than adequate, when adopted as the policy of the government? Did any man believe that the voluntary service was not amply competent for the purpose of defence? And would it not be more honorable, more glorious to rely on it, than to coerce the consciences of these citizens whose scruples forbid them from engaging in war? Such was the fact—such the reasonable expectation. When he said the militia service was degraded, he stated what was the fact. Make it a voluntary service, and it would become as respectable as the volunteers.

When he said if the country was in peril the volunteers would be more than sufficient to defend it, was it not palpable that this exaction of duty from tender consciences was not necessary; and if it was not necessary, if there was no necessity which demanded it, there was an end to the question, unless gentlemen were willing to venture on the perilous ground that the right of conscience is not a natural right, and therefore has no claim to be respected. The situation of the country would be very different abroad, under the shadow of the glory of the volunteer system than under that of the militia. Would any foreign power venture to attack the country, when it was known that it would be defended by volunteers? Already there is a sufficient number of volunteer companies enrolled. There were two companies in Alleghany. How many there are in Philadel-

phia he could not tell. In Dauphin and other counties there were similar organizations. And he believed that there could not be less than 15,000 or 20,000 in Pennsylvania, who were now ready, at the call of their country, to take the field whenever peril should assail her. How then could any man say that it was necessary to violate the rights of conscience? But the gentleman from Luzerne said here was a tax. Would gentlemen compel the payment of a tax? Would any set of men interpose between the collector and the Constitution to the wants of the country? No. If it was a tax, he would yield it. But what was the nature of the tax? A tax on a tender conscience. We are to tax men's consciences, for giving way to feelings not to be resisted. He would yield the argument there, but it was a tax on conscience. We lay a penalty on a man, because he is in default, and is censurable or criminal. We make him pay—for what? For enjoying his own conscience; and what was the difference between this and adoring the Creator according to the dictates of conscience? In both cases, it was a scruple—a duty. We come to make it penal in this land of liberty, if it was not profane to use the name of liberty in such case, to enjoy the rights of conscience. There was no man who could stand before his fellow man, or before his Creator, with this argument. We may call it exaction, penalty for scruples, or what we will, here is the fact. He agreed with the learned judge from Philadelphia, (Mr. Hopkinson,) that there might be a period when if government could not enforce a tribute for emergencies, it could not exist. We might impel citizens into the ranks, under the influence of a grand and public necessity. The citizen must then yield his rights. So it was as to those who held religious scruples. They must yield to the majority, for the purpose of maintaining the government. But they were not bound to yield further than the existence of this necessity. The language of the amendment was this: "Those who conscientiously scruple to bear arms shall not be compelled to do so, nor, except in times of exigency or war, to pay an equivalent therefor." "Exigency in war!" What was the meaning of the words? Who were to judge of the exigency? Were the Legislature to judge? Were we to submit it to Legislative decision to say when an exigency would exist? What was an exigency? It was contra-distinguished from war? It was the threat of war. The exigency arose with the threat. The militia were then to be prepared, enrolled, drawn out, because the country required their services. They were required to be ready in arms. This was the exigency intended, and not the calm, halcyon days, of peace. He agreed with those who insisted that we ought to be prepared in time of exigency, to be equipped and mustered for war. In this he entirely agreed. And in a case of war, or exigency, which would induce these preparations, there ought to be an equivalent paid, because a natural right must be surrendered. But in peace, in a state of profound peace, where was the necessity, where the expediency, which would justify such a call? He had heard sentiments which ought to be repudiated every where: that the rights of conscience were not natural rights, that any exemption on account of scruples was the creation of improper distinctions. And that there should be personal service without equivalent. He was not to be caught by such arguments. No nation had ever suffered by adopting the policy of toleration. What country ever did? He had heard it said that there could be no mode of testing consciences, and that

any man might claim exemption, with equal justice. This would be obviated by adopting the system of voluntary service. There could exist no difficulty in drawing the line. Let the gentleman from Franklin look back to the history of Pennsylvania, and he would find that there had never been, any difficulty in determining who were those entitled to exemption on account of their conscientious scruples. It had been construed to extend to Quakers, Menonists and others, whose tenets were well known, and who could not be suspected of pretending to possess tender consciences merely for the purpose of evading a further duty. He who would set up such pretext, from such a motive, might well be dispensed with in the service, for he would prove a traitor there. No such charge could attach to that large class of citizens, void of self reproach, who had adopted the peaceful creed as the guide of their actions.

But it had been said, that a man would start up and claim this privilege, when his neighbors all around him can say, that he did not believe in those scruples; that he would come to claim the privilege, not upon religious grounds, because he was not a religious man, but just because he chose to claim it, and that, too, in the presence of men who would brand him as a base hypocrite. Would any man dare to meet the infamy which might fall upon him for such a course of conduct as this? There was no argument could be built on this ground. In point of fact, the discrimination was easy and certain. There were not ten men who would incur the infamy, under pretences which were known to be false. A man of no religion claim an exemption on the score of a tender conscience! No: he would not dare to invoke the scowl of society, and the hootings of his neighbors.

He (Mr. F.) would now come back to the point from which he had started; namely, that those who were in favor of abridging the rights of conscience, could only do so on the ground of public necessity. He affirmed that the existence of this public necessity had not been shown, and that, therefore, this class of our citizens might rightfully claim this exemption. Every exigency which could justify a claim on them, had been provided for in the amendment. The class by whom this exemption was asked, was renowned for its love of order—for its obedience to the laws—for its charity. Was this aristocratic? Was this odious? Was this criminal? Look at the history of the world, and who could deny that to this little community, mankind were more indebted for liberal principles than any nation in the world. How long was it since toleration had been known on the earth? Probably, we might go back to the age of William Penn, but not much further. Where did it arise? Among religious men. It was a religious principle, which had been engrafted on free government, after the example of William Penn and others. But let us go back for two centuries, and what should we find? We found men taxing other men's consciences upon the very ground taken here; that was to say, should a man set up his consciene against a tax gatherer?

In other countries, a tax was paid for keeping up a national church; taxes were annually collected for that purpose. In such countries, a man might say he had conscientious scruples, aud he would be asked, shall a man set up his conscience against the tax gatherer? For, after

all, it was but a tax for the maintenance of an established church. That was the argument, and the same argument might be found in this Hall.

Again, we found gentlemen here doubting the sincerity of these persons. We had the charter, and we had the conditions of the charter. We still found gentlemen doubting whether these scruples were sincere or not. This was the argument of the 15th century; when men went to the stake to be burnt, and all sects, except the Quakers, were persecuted. They went to the stake, and they met death unflinchingly; it was said their opinions were so absurd that they ought to suffer for entertaining such scruples. And this was just the argument which had been urged here—that they were setting up their consciences against the defence of their country. How absurd! It was the old chapter of tyranny and intolerance. What right had he, or any other man, to substitute his own opinions for the consciences of other men, and to bring charges of fraud and deceit against them, simply because their opinions differed from his own?

In conclusion, he was of opinion that the Convention could not misunderstand the nature of this request. The principle was clear to his mind that public necessity alone could justify the Convention in calling upon this class of men. Let it be shown that such a necessity existed, and he (Mr. F.) would go cheerfully as far as that necessity required. If it could be shown that these trainings were actually necessary for the defence of the country, or as a preparation against emergency or war; if, he repeated, this necessity could be made clear to his mind, he would go with the gentlemen who opposed the wishes of these individuals. But, said Mr. F., till you show that necessity, the argument is mine, and the conclusion is mine.

Mr. Banks said, that he was always pleased to see the gentleman from Allegheny (Mr. Forward) take the floor, because he was clear and explicit in the expressions of his opinions, and he possessed the advantage, moreover, of being able to throw much ingenious argument about a cause, whenever he was called out to speak upon it. Whether his arguments were at all times satisfactory to those who heard them, or were not so, it was at all times gratifying to him (Mr. B.) to hear him upon any subject brought before this body. Nevertheless, according to his (Mr. B's.) opinions, the gentleman from Allegheny had taken a decidedly wrong view of the question now before the committee. The amendment of the gentleman from Chester, (Mr. Bell) did not go the lengths which the gentleman from Allegheny had supposed. It did not go to prevent the Legislature from enacting laws in relation to the conduct of all the citizens of the Commonwealth—Friends or otherwise, as gentlemen might think proper to term them. It did not go to provide that there should, or should not be, militia trainings. There was nothing of that kind, either in the report of the committee, or in the amendment by the gentleman from Chester, (Mr. Bell) or in the amendment which had been laid on the table, as proposed by the gentleman from the county of Philadelphia, (Mr. Brown.) There was nothing either in one or the other of these propositions, which went to make it absolutely imperative on the Legislature to keep up the militia trainings. There was nothing of the kind in any of the propositions. Why, then, had there been this ado about

the rights of conscience, and about taxes as equivalents for personal attendance at the militia trainings? Nothing was to be gained by such discussion; although it might be, and probably was, intended for effect. What its end might be, he did not know. If there was any thing in the article, or in the amendment, in reference either to the abolition or to the keeping up of militia trainings, the argument of the gentleman from Allegheny, might carry with it some force. When that gentleman had first addressed the committee on this subject the other day, he introduced to us the Constitution of the United States, to shew that neither the Legislature nor the citizens of Pennsylvania in Convention assembled, could dispose of the authority given to the Congress of the United States, in relation to the militia; and at that time he declared it was idle to contravene the action of Congress in regard to this, or any other matter in any State in the Union, while Congress kept within the limits of the Constitution. The gentleman was unquestionably right in the view he then took. And yet his argument on the present occasion went to shew the existence of a right to contract the power of Congress in regard to a portion of the citizens of Pennsylvania.

Mr. FORWARD rose to explain. The act of Congress recognized all exceptions granted by the State Legislatures. We might excuse any man and yet act in perfect conformity with the requisitions of the law of Congress.

Mr. BANKS resumed. He had not, he said, the act of Congress before him; but he had before him the Constitution of the United States, which declared that Congress had control over every thing in relation to the land and naval forces of the country; and, so far as his recollection went, there was no act of Congress which authorized the Legislature of the State to excuse A or B, or any one else. The eighth section of the first article of the Constitution of the United States, among other things contained the following paragraphs:

"Congress shall have power to make rules for the government of the land and naval forces."

"To provide for calling forth the militia, to execute the laws of the Union, suppress insurrections and repel invasions."

"To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, &c."

And the second article of the amendments to the Constitution of the United States, is as follows: "A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."

So much for the Constitution of the United States. In relation to the protection and support by the government, the fifth section of the first chapter of the Constitution of 1776, declared as follows: "That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community, and not for the particular emolument or advantage of any single man, family, or set of men, who are a part only of that community."

The act of Congress of 1792, which had been this moment sent to his

table, he presumed by the gentleman from Northampton, (Mr. Porter,) was in these words:

Act of Congress 1792: Act more effectually to provide for the national defence, by establishing an uniform militia throughout the United States:

"SECT. 2. That the Vice President of the United States; the officers, Judicial and Executive, of the Government of the United States; "the members of both Houses of Congress, and their respective officers; "all Custom House officers, with their clerks; all post officers and stage "drivers, who are employed in the care and conveyance of the mail of "the post office of the United States; all ferrymen employed at any ferry "on the post roads; all inspectors of exports; all pilots; all mariners, "actually employed in the sea-service of any citizen or merchant within "the United States; *and all persons who now are, or may hereafter be,* "*exempted by the laws of the respective States, shall be and are hereby,* "*exempted from militia duty, notwithstanding their being above the* "*age of eighteen and under the age of forty-five years.*"

Thus, continued Mr. B., it appeared that, in pursuance of this act, the Legislature now possessed the privilege to exempt, if they thought proper to do so. "And all persons," says the act, "who now are, or may hereafter be, exempted by the laws of the respective States, shall be, and were hereby exempted from militia duty, notwithstanding their being above the age of eighteen, and under the age of forty-five years." This being the case, continued Mr. B., it was in the power of the several States to exempt persons, so far as they thought proper; and the Legislature under that act and the existing Constitution would have the power now, if they thought proper to exercise it, to exempt members of the Legislature and all other persons. As we were now about to revise the Constitution of Pennsylvania, and as we were placed towards the people of the State in the same relation as though we were about to frame a form of government where no government had before existed, the question was, whether it was expedient to incorporate into our fundamental law, the proposition offered by the gentleman from Chester. He (Mr. B.) doubted very much the propriety of incorporating any such principle. He doubted whether it was right or expedient for this committee or the Convention, to exempt any portion of our citizens from the operation of general laws or regulations. He doubted—indeed he was satisfied in his own mind, however, other gentlemen might satisfy themselves by reasoning according to the belief which each entertained—whether it was proper for this committee to say that A or B should be exempted from the operation of any general regulation with reference either to the militia, or to any other department of the Commonwealth. Would it be right, would it be treating the rest of our fellow citizens fairly, to say that any one society of christians, of any character or description, should not be subject to the same impositions, if gentlemen were so pleased to call them, in relation to the support of the government and the protection of the people of the Commonwealth, to which others were subject under the Constitution and laws of the State. Surely not. It might be expedient for some, and advantageous, but not right. He knew what the argument was which had been used, and very forcibly used, by the gentleman from Allegheny, (Mr. Forward) that *conscience* might interpose its authority and save one man from doing that which all others were bound to do under

the laws of the Commonwealth. That gentleman contended that you taxed a man's conscience when you charge him with the payment of public dues, or of taxes to support your government. Tax his conscience! No—you tax his property, and if his conscience interferes and says that it is wrong, would you call that taxing his conscience? All of *us*, under this plea, when taxed for the support of the government in any of its branches, might say it was improper, because we thought the legislation wrong, and *our* consciences disapproved it. Would it be right for us to say, we would not pay because legislators were mistaken in their views, in putting upon the people charges which were not called for or expedient? And were not our rights the same in regard to toleration? Did any man ever hear of the species of toleration which has been urged upon the attention of the committee in the course of this argument? Exempt a man from bearing arms if he chooses to pay an equivalent for personal service, and do you not thus tolerate him to choose that which he prefers? You put no compulsion on such a man. If you leave the Legislature free to say, that all men should bear arms when the exigencies of their country required, he (Mr. B.) contended that no imposition was thus placed upon the consciences of men. No such thing. Every man chose that which he preferred; namely, whether he would carry arms, the country requiring his services, or whether he would pay an equivalent for personal service, and for that protection which others gave him, by marching to the tented field, and by baring their bosoms to the bayonets of the enemy. Government had in view the good of the whole people; and all Legislatures, and all enactments by Legislatures, had certain avowed objects in view, of giving protection to all and prescribing rules of action for all, with an equal and impartial hand. The desire of all, was, that they should have protection, and it was right that every man should contribute from his means, as his neighbours did, to the maintenance of that protection. Would we not, by the very act of exempting one portion of our citizens from this necessary burden, place them above their neighbors and fellow citizens in relation to the matter of military service? He knew that this class of citizens believed it to be wrong to take up arms to defend their country, their persons, or property, or their neighbor's property; but what of that; while I, in my person, protect them and their property, they are bound in justice to support me. What was remarked yesterday, by the gentleman from the city of Philadelphia, (Mr. Hopkinson) that he did not choose to stand at his neighbor's door with a musket to defend him, whilst he was packing up his plate, must have left an impression on the minds of those who heard, not to be effaced. This was a forcible allusion to the condition in which the country had been placed, and might be placed again. That being the case, was it not right that these individuals should contribute their portion to the support of the government? The portion of Proud's History which had been read yesterday by the gentleman from Luzerne, (Mr. Woodward) was sufficient certainly to satisfy us, that this doctrine was right. If they did not contribute to the support of their government, they were not acting like good citizens. If they allowed the Legislature to pass acts of assembly authorizing these militia trainings, and did not choose either to give their personal services or to pay an equivalent, were they acting in good faith to the Commonwealth? Certainly not. And if they would not so contribute, was it not proper to coerce payment—to

take their property if they possessed any? Might he not go further and say, that the collectors of militia dues should lay their hands on their persons, and to dispose of them, or to compel payment of these just demands? He would not go so far as to say they should be tied to dead bodies for punishment, as was sometimes done in ancient Rome; nor did he think that they should be sold, as debtors were according to the provisions of the civil law. But he did think that they should be compelled to pay, in the same way as the law compels the payment of all other dues. Surely, if one portion of our fellow citizens ought to be compelled to pay, every other portion should.

He knew, as had been remarked by the President of the Convention yesterday, that the militia had been brought into disrepute. Not (said Mr. B.) by persons belonging to it, but by those who were unwilling to carry muskets, or corn-stalks, or to pay a dollar a day for being excused. By those who would like to be regarded as the exclusives of town and country. In this way was the militia system brought into disrepute. Those who acted in this way, knew nothing of the advantages of the system, and thus were for putting us at the mercy of a hired soldiery—conscription—if gentlemen pleased. He knew not what other delegates on this floor thought in reference to this subject. But, he could speak for himself: he had been a militia man, and had shouldered his gun as soon as he was able—turning out with his neighbors, and attending the trainings. He had never felt degraded; on the contrary, he always had felt it his duty to encourage obedience to the law, and to aid as far as he could, in every department of the government of the country. He had from his youth upwards, been taught to do so, and he would instruct his children to follow in his footsteps in that respect. In his humble opinion, it was the bounden duty of every man to do all in his power to aid and support the government under which he lives, and to further the welfare of his fellow men. Every man who refused to do this, ought not to be entitled to, and certainly was not worthy of, the protection of the government. He (Mr. B.) was for upholding the militia as our best defence in a time of war. If it was kept up, as it ought to be, there would be no danger of our soil being invaded by a foreign foe. The provision, as it had been agreed to, authorizes the Legislature to do as they think best in the matter. The section now read: "The freemen of the Commonwealth shall be armed and disciplined for its defence, when, and in such manner as shall be directed by law." Supposing this to be agreed to, and that the Legislature should not authorize militia trainings, or even if they should, and did not impose a fine for non-attendance, the section would then be entirely inoperative, and he thought gentlemen did not desire any such thing. What necessity, he would ask, was there for the amendment of the gentleman from Chester, unless his object was to exempt a sect, that was as fully able as any other, from the payment of a contribution? Could there be any danger apprehended by those who entertained conscientious scruples in being called upon to do militia duty? Was their property likely to be endangered? Certainly not. Then why not leave the regulation of this matter in the hands of the Legislature? If the Friends were in no more danger of being injured than other citizens who were not conscientious in this way, why should they have a special favor granted them in preference to others? It really seemed to him preposterous. Those who contended for such a privilege, were

laboring under a great mistake in taking such an exclusive view. He would never consent to countenance such a classification of citizens whether they numbered fifty or fifty thousand. Let our Constitution have in view the welfare of the Commonwealth generally. And, let our acts of assembly fix the rights and privileges of the community of Pennsylvania without partiality or prejudice.

The delegate from Allegheny had spoken of conscience as being a natural right. Now, he (Mr. Banks) did not understand it to be a natural right, but his belief was, that conscience was a moral sense. If he was not mistaken, it was the celebrated Locke who said "Conscience is to the judgment, what the understanding is to the will." Somewhere else, too, he had read "what conscience dictates to be done or teaches not to do." But in all governments—whether in the government of the United States, or any other well regulated government, as, in that of Pennsylvania, inconveniences must be endured by the few, for the benefit of the whole. Nothing at all was sought to be imposed upon any portion of the Commonwealth, which would not operate on all alike. Then why should we be asked to exclude the Quakers from the operation of a general law? Now, the gentleman from Allegheny, (Mr. Forward) and others, knew just as well as he did, that it would be wrong and unfair to grant any privilege to one body of men over another. He would ask the delegate from Allegheny whether he could, consistently with his sense of duty to the country, do any thing which should not induce every citizen, in the time of danger, to come forward and repel the foreign invader? No man, he believed, that had ever thought for one moment on the subject, could believe it. He might agree to it, in a time of peace, on account of the tender consciences of those who refuse to bear arms. He might agree to it, because the exigencies of the country are not such as to require that he should repair to the tented field. But money was no equivalent, in a time of war, to a man for risking his life. Would all the money that the society of Friends could collect, be any equivalent to me, (said Mr. B.) if I should lose my life in saving their property and persons? Would it be an equivalent to my wife and children, if I should be so cut off from them? No such thing. And such would be the opinion of every properly constituted and correct mind. The remarks made yesterday by the President of the Convention, in allusion to the British General, Ross, who, when on his way to Baltimore, seeing a fine regiment from that city before him, said "he wished that regiment would withdraw, or he would have to let loose his blackguards upon them," although intended by the President to disparage the militia system, had on his mind a contrary effect. These blackguards, let it be remembered, were mercenary soldiers—not militia—and under a British commander. The gentleman might have proceeded a little further. He did not tell us, although he knew it well, that it was a bullet from a militia-man, that killed that same General Ross, and thus prevented the shedding of much more blood. It was idle to tell him (Mr. B.) of the kindness of British officers or soldiers to American citizens. He could not understand it. He had had ancestors in the service of his country—as had most of the delegates on this floor—and therefore he could not help feeling warmly on the subject. Let gentlemen read the narrative of Captain White, of our own Adams county, and then talk of the kindness of such officers and soldiers. Tell it not in Gath, publish it not out of this chamber of deputies from a free people,

that British officers and soldiers ever behaved kindly to Americans! Let others ridicule the militia as they please, but let the members of this Convention show to the people of this Commonwealth, that they, for their part, will sustain the system of their forefathers—that system which was adopted as long ago as the year 1777. Let us cherish the doings of the days when every man carried his musket, not as a hired mercenary, but as a militia-man, in defence of the Commonwealth and the country. Men in former days, did not refuse to carry their muskets, and use them, too, when the exigencies of the country demanded it. There had been a time when men did not shrink when they were required to train, no matter whether it was once or thrice a year. This brought to his mind what had been said by the President of the Convention, that trainings occasioned a great loss of money—"these abominable trainings," if the gentleman pleased. The man who could be relied on in the day of trial, depend on it, was not the man to take money into the account. The poor man did not estimate his duty to the State by dollars and cents. He would turn out when his country required that he should do so. No man who desired the perpetuation of the free institutions under which he had lived and been instructed, and which he ought to cherish as his life, would object to sacrifice some of his means and his comfort, in order that military trainings might be kept up, so that in the hour of danger, we should be the better prepared to defend our homes, our firesides, and our liberties. Looking, then, at this important subject in every light in which it could be viewed, he thought it would be best to let the Constitution stand as it now did. He well remembered the remark which fell from the gentleman from Philadelphia, (Mr. Scott) a few days ago, on a motion made to strike out an amendment excusing those from bearing arms who entertained conscientious scruples—that his sons should be trained, &c. He (Mr. B.) approved of the sentiments uttered by that gentleman, and hoped they would be cherished, for they were characteristic of every man who desired to act out the conduct of a freemen on all occasions. Now, he supposed that the society of Friends, and every other society, and every individual in the Commonwealth, would be as safe under the Constitution as it exists, as if it were changed. He doubted much whether any proposition could be brought before the people, which would meet their approbation in preference to the section in the Constitution of 1790. He would vote against the amendment of the gentleman from Chester, (Mr. Bell) and if the gentleman from the county of Philadelphia should persist in pressing his proposition, he would vote against that also. He (Mr. B.) was satisfied with the section as it now stood, and he believed that they who entertained conscientious scruples in regard to bearing arms, would fare better by clinging to the Constitution as it is, which does not compel them to bear arms, than under the amendment, by which they could be compelled.

Mr. Reigart, of Lancaster, said that coming from a section of the state in which there were a great many persons conscientiously scrupulous on the subject of bearing arms, he should avail himself of the present opportunity of offering some reasons why they should not be compelled to act contrary to their religious notions. A great number of his constituents, whom he had the honor to represent in this Convention, were men of influence and wealth. Some of them were Menonists and Amonists, and Dunkards, and Baptists, different from the Quakers in this re-

spect that they never refused to pay their fines, though they were scrupulous in respect to bearing arms. During the whole of the interesting discussion which had taken place on this important subject, he had listened with delight and instruction to the various speeches that had been delivered. He could not, however, consent to vote to make any distinction between the different citizens of the Commonwealth. The gentleman from Chester, had, in an eloquent speech, asked the Convention to place all the citizens of the Commonwealth on an equality, but he had failed to show that any inequality existed. And, having failed to show that, he had failed in his position. Having been unable to prove inequality, he could not ask for equality. What, he asked, was the position the delegate had set out with? Why, the position was, that the society of Friends (as he had contended for them alone, not for other denominations) have conscientious scruples.

Mr. Bell, of Chester, said: The argument was applicable to all.

Mr. Reigart resumed: They asked not other men to perform service without payment for it. There was nothing more equally protective of the rights of all classes than the present Constitution. That instrument goes on the ground of equal rights and privileges, and fully carries out that principle. The gentleman from Allegheny had refered to the Constitution of 76' as giving greater privileges to those who scruple to bear arms, than the present Constitution. The sixth section of the first chapter of the Declaration of the Rights to which he refers, provides, that "every member of society hath a right to be protected in the enjoyment of life, liberty, and property; and therefore is bound to contribute to the expense of that protection and yield his personal service, when necessary, or an equivalent thereto." This did not mean, in his opinion, an equivalent in money, but in personal service; so, in the next clause, it is declared, that "no man who is conscientiously scrupulous of bearing arms, can be justly compelled thereto if he will pay such equivalent:"—that is, if he will furnish a substitute, who will render the personal service required of him, and who would fight the battles of the country in the manner in which a free citizen is expected to do. The new Constitution was more indulgent to the scruples of citizens than the old one, and it went so far as expressly to exonerate them from personal service in the militia on the payment of an equivalent in money. The same people now come to us and demand that they shall go scot free. We admitted liberty of conscience to be a natural right. The right claimed by the friends was that, being conscientiously scrupulous of shedding blood, they should be free from the burden of militia duty on paying an equivalent for it, *in time of peace*. That was the extent of the right claimed. But, if there was any principle of consistency in the claim, would it not extend also to *time of war?* The right of conscience, in this case, was limited to a conscientious scruple to shed blood in time of peace, but not upon an aversion to war. This inconsistency upset the whole of the argument which the gentleman from Allegheny, (Mr. Forward) in his able and ingenious speech, founded upon the freedom of conscience as a natural right. It was admitted that, in the emergencies of war, the right claimed for the scrupulous must yield to the necessity of the case, and in this view of the matter the whole question ended.

It was related in one of the histories of this Commonwealth that, in 1721,

James Amon, the founder of the sect called the Amonists, petitioned the proprietory government to be relieved from the payment of all taxes. He represented that he had no occasion for the aid of the courts nor of the civil power; that he had no suits, and no quarrels with any body, and needed no protection. But the proprietory government said, no. You are under the same protection of the government that every other citizen is, and you must contribute your share of the tax levied for the support of the government. So here, in answer to the demand made upon us by the Friends, we say you must pay an equivalent. They reply, we will meet you half way. We will pay the equivalent in time of war, if you will relieve us from it in time of peace. The gentleman from Philadelphia asked what brought our ancestors here? it was a desire to enjoy freedom of conscience. They fled from the intolerance and bigotry of the old world, where they were persecuted like felons, for the crime of worshipping God after their own consciences, there they were not permitted to enjoy any religious freedom. The two cases were not parallel. There they would gladly have paid an equivalent for the sake of enjoying their own mode of worship and their own religious opinions. They came to the wilds of America to get clear of religious restraint, and here they and their descendants, to this hour, are free to worship in their own way, without any restraint. The only question was, whether one portion of them should be exempted from the military taxation, while the other was not. It was the exclusive privileges of the old countries which was the cause of all their persecution and suffering, and the object of all their complaints and aversion. Carrying out the principles of the gentlemen from Allegheny they fall to the ground. The argument is over and the contention is over. Let us see what other states have done on this subject. In Massachusetts, the Friends, and others who were exempted from personal service in the militia, pay an equivalent, and so every New-England State except Maine. The Constitution of Tennessee has a remarkable expression in relation to this subject: "non-resistance," it says, "is absurd." That is the argument of the Constitution of Tennessee, and it is one that cannot be got over. His course would be to vote against the amendment and the report, and to get back to the provision of the old Constitution and adopt it, with some modification.

Mr. MERRILL said, it had been remarked here that this question was settled. If it was so, it had been settled, after a debate on only one side: all those who professed to be in favor of recognizing and protecting conscientious scruples, had deferred the expression of their views, until that subject should come finally before the committee, in another part of the Constitution. He was willing the discussion of that branch of the question should be postponed to another time. But, as almost all those who were on the other side of the question, had taken this occasion to bring forward their views, he would make a few remarks in reply, though the issue had been made without any reference to the question immediately before the committee. A remark had fallen from the gentleman from Northampton, (Mr. Porter) which was certainly candid and might be true, that there were very few who cared any thing about the consciences of others. He trusted, however, that we did not wholly disregard the consciences of others, and that we entertained that principle of toleration which would lead us to accord to others, that which we claimed for ourselves. That freedom of conscience is the very foundation of our insti-

tutions, no one would doubt. It would be perceived by reference to almost every fundamental law, and to the proceedings of almost every public body. A strict observance of the rights of conscience, was insisted upon by all the founders of our institutions. The very clause of the present Constitution which was now under debate, recognized this principle. The third section of the ninth article of the same instrument was still more explicit. It declared that "no human authority can in any case whatever, control or interfere with the rights of conscience." That was the declaration of 1790, which was then authorized by the people of Pennsylvania, and had since been acted on for forty-seven years—that "no human authority can control the rights of conscience." Is that true or is it not? Is this principle held and believed in Pennsylvania? I cannot doubt it. One question arises, how far is the principle to be acquiesced in?—and another is, how far are those who profess conscientious scruples sincere in their professions? Though there had heen no positive declarations that the Friends are insincere in their professions, yet there had been indications of distrust in their sincerity. On this point the question must rest. Do you believe that those who profess conscientious scruples, are sincere? Who makes those scruples? What is their character and tenor of life? Are they men who would report one thing, while they believed another? If they were sincere, then "no human power can interfere," with them. Then had these scruples been assumed to mean some bad and wicked purpose, or are those who profess them, men of such character and deportment, as to afford a guaranty of their sincerity? That there are men among them who may act from the paltry motive of advantage is probable; but does such a motive operate upon the whole sect? They are sober, quiet, industrious and benevolent, and their mode of worship and belief holds out no allurements of any sort. Their's is not a popular belief in this State. It never was, nor could it ever be, the popular and predominant mode of belief any where. Do you believe that those people have separated themselves from the popular belief, for an interested motive? Would they make more money by it than by any other faith? No. Their belief was unpopular, and it was held against the sentiments of a vast majority of the people of the State. That was the strongest possible proof that we could have of their sincerity. Who professed their religion in early times, for the sake of interest? Those who first began to profess it, were persecuted to imprisonment and death. Are we to be told that they were not sincere? What better evidence can a man give of his sincerity, than his willingness to stake his life and his reputation upon his professions? What evidence can we have of the sincerity of any political man, that is stronger, than we have in this case? These scruples then being in sincerity entertained, our fundamental laws declare that "no human power can control" them. Are we now going to subvert this principle, and to say that the rights of conscience shall be protected only so far as suits our convenience? Shall we say that no one has a right to claim protection in matters of conscience; that his protection shall depend upon the discretion of the Legislature; that the rights of the minority shall be left to the decision of a fluctuating majority; and that every thing which the minority does shall be wrong, and every thing done by the majority shall be right? Can we not go a step further and invade personal rights and rights of property, with as much reason as we do those of conscience? If one be doomed to destruction, how long will

it be before the other is offered up a sacrifice? I believe, said Mr. Merrill, that the right of conscience is as sacred a right and as perfect a right as any other; while at the same time, it is less capable of being protected, and more liable to abuse then any other. It is a perfect right and is to be enjoyed as we enjoy all other rights. In time of peace there should be full and free toleration of these scruples; in war, those who profess them and those who do not, must share alike the common hazard. In this way, all will be put on a common footing. Every thing will be tolerated in peace; but in war, all must partake of the common burden and hazard. Is it not fair and proper, that we should put this matter to the Friends, in this way? They can ask no more; we can offer no less. I have no doubt, sir, said Mr. M. that the conscientious scruples of the Friends are as great in time of war, as in peace; perhaps much greater; but we say to them that, in that emergency, you must partake with us in the common danger.

The gentleman from Susquehanna, says, that granting them this is putting them on a different footing from our other citizens. This he denied. He had no idea of placing them on a different footing, and did not ask it, and he would not grant it. He would tell them that in time of peace, their conscientions scruples should be regarded; but in time of war, he would tell them that they had a stake in the community, and that they must help to maintain it, or lose it: he would tell them that they received equal protection with all other citizens, and they must return equal services to the country; therefore, this was only securing equal and exact justice to all our fellow citizens. Then, if the scruples of these people are honest and sincere, which none can doubt, we will regard them when the exigencies of the country does not require their services. Could we do less than this? He thought every consideration demanded this of us. They at one time were the inheritors of this land, and they practised toleration to all mankind; we are now in the majority and we ought to practise toleration to them—they had a right to expect this. When they were in the majority in this State, they might have excluded the Presbyterians and Lutherans and other religious sects, but they did not do this. We came here by their indulgence in the first place, perhaps by their invitation, he did not know, but we enjoyed their indulgence and their protection, and now when we are in the ascendency, we should practice the same kind of toleration to them. He was sorry to hear the truth and sincerity of the professions of these people doubted. The first doubt in relation to their conscientious scruples was raised by the gentleman from Luzerne, (Mr. Woodward.) He could not understand the conscientious scruples of the society of Friends—they were totally incomprehensible to him. Why, other men may not understand his conscientious scruples; and does he expect all other men to give way to him. Certainly not. He does not allow his word to be doubted in relation to any matter—why then does he doubt the word of others, when they tell him they have conscientious scruples. But he does not understand their conscientious scru ples, therefore, he would allow them no liberty at all. Why, where would this thing lead us to if carried out. The king of Babylon could not understand Daniel's conscientious scruples; He could not see the necessity of any man's praying three times a day—and therefore he threw Daniel into the lion's den. Charles the fifth, could not understand the conscientious scruples of Martin Luther. Henry the eighth, could not under-

stand any body's conscientious scruples, who did not profess the same faith with himself, let that be what it might; and the government of England at one time could not understand any man's conscientious scruples, who would not contribute to their church; and how many ministers were sacrificed, and how much ruin was brought upon that country, because many individuals would not conform to this doctrine. He might not be able to make the Quakers understand why he preferred the Presbyterian church or the Lutheran church, to theirs. You, Mr. Chairman, might not be able to make the Episcopalians understand why you preferred the Presbyterian church, but that did not say that his doctrine was any the less correct, because they could not understand it. His duty was a matter with his own conscience, and he was not to be controlled or driven from his belief, because others could not understand it. Again, gentlemen might recollect that in Scotland, Knox and a large portion of the reformers of that day, wished to appropriate certain lands to the education of the children of the kingdom—but those in the possession of them could not understand any such doctrines, so they divided them among themselves. The laws of England required every man to pay tythe for the support of the established church, and the rulers of that country could not understand the consciences of any person who was not willing to do this. They must pay tythes to a church which they never enter. Suppose such a law was to be passed in this country, would not gentlemen have conscientious scruples about paying it? Would not they ask to be relieved from this burden? There would be no difficulty then in understanding where gentlemen's consciences were. All he asked then of gentlemen now, was to do what they would expect to receive under similar circumstances. Let us go one step further. If conscience is a thing that is to be judged of by other men, those who are least informed and take least pains to examine into matters of conscience are to be the judges: and those who take great pains to come to right conclusions, are to be the victims. All any man has to say is, that he dont understand another man's conscience, and on this principle you can justify every persecution, which has ever been practised in the world. Are we to follow the example of the dark ages of Europe, or are we to be governed by the light of modern reform? Are we to go back to those ages when no man could understand the conscience of those who did not believe with him, or are we to practise upon the blessed doctrine of toleration to all? It is right and proper that every man should be left to judge for himself, in relation to conscience; and if gentlemen who could not understand the consciences of others, would examine their own breasts, they would see that this should be the case. It was to be observed that they who had but little sympathy for other men's consciences, had generally a very great determination to stand by their own, and not yield it up to any person or on any occasions. The Presbyterians when the attempt was made to force Episcopacy upon them, were most strenuous in resisting it. Their consciences would not permit of their receiving the doctrine; they could not come to the same conclusion, and they rejected the doctrine. This matter then, of judging of the consciences of men, is a dangerous matter, for it will always happen that the less informed, the more ignorant, and those who have never taken any pains to inquire into the scruples of conscience, will be the judges.

It has been objected to this amendment, that it will raise up privileged classes, and create inequalities in society, and that we must not make

exemptions from a general law. Why, there are more exemptions now from this militia law than any other general law in the State; all who are over forty-five years are exempted; all who have served seven years in a volunteer corps are exempted; and men are exempted by name or title. Judges of courts, ministers of the Gospel, justices of the peace, postmasters and others are exempted. Then this argument that there must be no exemption from general law, went for nothing.

He wished now to say a word with regard to the cry "exemption from taxes," which are levied for the support of the government. Now it was easy to call every thing by a name, but he wanted to have every thing called by its right name. Moneys demanded and collected from men for a failure to perform certain duties, was not a tax, it could not be looked upon as a tax. It was declared in the law to be a fine, and to turn round and say it was a tax, and say that the Friends ought not to be excused from paying this fine, because it was a tax, was a perversion of terms. It was wholly absurd to call these fines a tax. It is true that both takes money from the purse, and in this light alone could it be viewed as a tax. But were they both for the same object? No sir; one is in aid of the government, and the other is a penalty for a delinquency in the performance of certain duties. It was nothing more nor less than what it professed to be, a fine. Now he would ask whether by any implication in the world there was any ground to suppose, that when conscience would not allow a man to do one thing, it would allow him to do another in precisely the same form. He could see no reason for any such supposition. He himself had none of these conscientious scruples, nor did he know that he had a half dozen of constituents, who had; or who desired this change to be made; but he desired to grant the Friends this right. He had no doubt that they had conscientious scruples; it was not to be doubted by any one—no man could doubt it. Do you suppose if they had no conscientious scruples about paying an equivalent for personal service, that they would allow their property to be levied upon to pay this fine? Would they allow their most necessary furniture to be taken and sold? Would they allow such men as the collector of fines referred to by the gentleman from the city, (Mr. Cope) to enter their houses and take away their property, when they had the money in their pockets to pay the fine. Would they subject themselves to the scoffs of ruffians, if they were not conscientiously scrupulous against paying this equivalent. It was not to be doubted then for a moment, that they were sincere in their pretentions. All their acts prove it, and we have not the least room to doubt it. He then asked gentlemen to consider this matter solemnly and seriously, and endeavor to remove all prejudices from their minds, before they give their votes. He would ask the gentlemen to examine themselves and see if they were not acting on this matter from some selfish consideration; whether it was not possible that some political feeling, some old grudge, something which may have existed in their minds for years, might improperly influence them in this matter. He would ask gentlemen to view this question in all its bearings, and examine well the danger of disregarding the right of conscience. If we do not hold the right of conscience sacred, we have nothing to recommend our institutions to the oppressed of other nations. On it rests our only hope, and if it is given up, there is nothing in our institutions worth preserving. It is a sacred right and must be held sacred

by the freemen of America, if we would recommend republican institutions to the rest of the world.

Mr. WOODWARD, moved that the committee rise, which motion was negatived—yeas 35, noes 46.

Mr. SHELLITO hoped gentlemen would not force a vote at this late hour, and in the condition in which the committee was now in. If the question is one of importance, it is important that we should have every vote that can be obtained. He hoped therefore that the committee would rise.

Mr. FORWARD concurred entirely in opinion with the gentleman who had just taken his seat, he hoped the committee would rise.

On motion of Mr. FORWARD the committee then rose ; when,

The Convention adjourned.

THURSDAY, OCTOCER 26, 1838.

Mr. PORTER, of Northampton, submitted the following resolution, which was read a second time and adopted :

Resolved, That a minute be made on the journal of to-day, of the omission to insert among the nays on the minutes of the committee of the whole, on page one hundred and forty of the printed minutes, the name of Mr. PORTER, of Northampton, who voted in the negative, and his name omitted by mistake in the printed journal, although found on the original minutes.

SIXTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. Chambers in the chair, on the report of the committee to whom was referred the 6th article of the Constitution.

The question being on the amendment offered by Mr. BELL, as modified, to read as follows, viz : "Those who conscientiously scruple to bear arms shall not be compelled to do so, nor, except in times of exigency or war, to pay an equivalent therefor."

Mr. PURVIANCE, of Butler, said, that as he intended to vote in the affirmative on this question, he would ask the indulgence of the committee for a few moments, while he assigned, if not what may be considered reasons by those who heard him, the views which influenced his opinion, and which might be satisfactory to those whom he had the honor in part to represent. It appeared to him that the report of the committee, if adopted, would leave the proposition of the gentleman from Chester unobjectionable. The report proposed to strike from the Constitution the present objectionable feature which imposes on the Legislature an imperative obligation to pass laws arming the militia. It changes the Constitution

by the introduction of the word "when." If we adopt the report of the committee, which he hoped the committee would, it would read thus: "The freemen of this Commonwealth shall be armed, organized and disciplined for its defence, when and in such manner as the Legislature may hereafter, by law direct." What was the motive of the proposition of the gentleman from Chester—and what the objection? It proposes that no one shall be compelled to bear arms, "nor, except in times of exigency or war to pay an equivalent therefor." Was the request on which this proposition was founded, which emanated from a most respectable society in the Commonwealth, a reasonable one, and such as ought to be granted? What was the objection to it? The gentleman from Fayette, (Mr. Fuller) and the gentleman from Centre, (Mr. Smyth) seemed to be peculiarly sensitive on the subject of the militia. There was one objection to the amendment only which they had suggested which he would examine. They say that the militia system should be supported because it stimulates volunteers. It was a costly stimulant. We are to pay the enormous amount of 24,000 dollars a year for supporting a system which is admitted to be an object of ridicule, in order to keep up, what the gentleman from Fayette and the gentleman from Centre, call a stimulant to volunteers.

Mr. Banks here inquired who on the other side, had admitted the militia to be an object of ridicule.

Mr. Purviance said, he did not name the gentleman from Mifflin. But he would merely ask whether that position was, in point of fact, true? Were persons driven from the ranks of the militia to those of the volunteers on account of disgust? Was it in point of fact correct? As far as his experience would enable him to decide, the volunteers were more in the habit of giving up and falling back into the militia. And how was that? Was the reasoning of gentlemen on this point sound? If it was necessary to keep up a portion of our military system in a position to provoke ridicule and contempt, for the purpose of stimulating another portion of it, viz: the volunteers—the argument might be carried out, and gentlemen might urge that it was necessary to keep up vice for the purpose of promoting virtue—to keep up a ridiculous system for the purpose of warning you from it—to keep up, in this government a positive vice in order to point your steps to the opposite virtue. This was the argument of gentlemen. Was it sound? If this position was not true in fact, or sound in reason, it was the only one offered to justify these annual parades of militia which had led to so much abuse and ridicule. He proposed to add a little to the statement already made as to these trainings, and to ask if they were necessary to the disciplining of the citizens. He was ready to admit that this was the object of the framers of the Constitution. They had declared that the freemen of this Commonwealth shall be armed and disciplined. Has the present militia system effected that purpose? Where did you find subordination in the militia? The system was only productive of insubordination, and habits are acquired in the militia from which those who gained them can never be divested. When a service of years is required, habits are acquired which can never afterwards be thrown aside. Place men in the militia where they obtain habits of insubordination, and they can never afterwards be disciplined and taught the science of military tactics. By the present system

was there any thing like discipline presented? He professed himself to be a defender of the militia. Like the gentleman from Crawford, (Mr. Farrelly) he wished to elevate that branch, because it could not be denied by any one that it was now the object of contempt and ridicule. Let gentlemen draw the contrast between men in the militia ranks shouldering corn-stalks, whooping, swearing, noisy and ungovernable, and the soldiers which were in the contemplation of the framers of the Constitution, when they constructed this system, and say whether the present system has fulfilled the object of its creation. In the one, it is all order, in the other system, all disorder; in the one, beauty and system are conspicuous, while deformity and confusion characterize the other. Did the militia system inspire any valorous spirit, any chivalry or patriotism? Was any love of country produced by it? No one could look at the militia ranks at the annual trainings, without a feeling of contempt. In the volunteers, we discover the generous inspirations of an ardour and patriotism calculated to benefit and elevate the country. The regularity and discipline which prevail in their ranks, bring to mind the soldiery who may be entrusted with the perilous enterprise of war, a service which must devolve on them at some time or other. On the other hand, the exhibition of a militia training can only be regarded as a laughable farce. He would ask these gentlemen who objected so much to any provision now in time of peace, how the framers of the system intended the provision to be carried out? He would call on the gentleman from Philadelphia, who held the rank of Colonel, and had a regiment of militia in his keeping, how it was intended to give efficiency to the system? Was it made effective by the system he now pursued? What are these trainings? The men go through the manual exercise. You call on them to carry arms—present arms—trail arms. Instead of obedience to your command, they give you a dance or a song. You order them to shoulder arms, and you see each man knocking off his comrade's hat with his corn-stalk. And this was the organized and disciplined militia of the Commonwealth. He would go still further, because gentlemen on the other side had not failed to place the militia in an imposing attitude. Suppose you desire to put the militia in battle array, and to exercise them in the tactics of the field; and you order them to form in *eschelon* or to wheel from the centre to the right and left.

Mr. M'Cahen said, he had never been an advocate of these militia trainings. He had only said that the cause of the ridicule was to be sought for in those who are opposed to the system, and who had endeavored to bring it into ridicule.

Mr. Purviance resumed. He would not again refer to the gentleman, as he appeared to be sensitive on the subject, but he would pursue his inquiry in relation to the order and discipline on the part of the organized and disciplined corps of militia, because some gentlemen had declared distinctly that volunteers were militia and they were all upon the same footing; others, however, had made some distinction between the two. Now he would pursue this picture still further, and he had witnessed it himself. He had seen them drawn up in battle array, and heard the command given them to wheel to the right and left and fire, and no sooner was it given than they found themselves in solid column, not one of them knowing or desiring to know whether he was right or wrong. Again,

when you order them to dress by the colours, what a pretty line you have. He called upon the gentleman from Fayette, (Mr. Fuller) to say whether in obedience to that order he had not seen, instead of a strait line, a line at an angle of forty-five degrees, yet these are the grand and the disciplined militia of the Commonwealth of Pennsylvania, which are the bulwarks of her defence. Now he might say that he could turn with pride to our volunteer corps, that they have ever been disciplined and ever shown a disposition in favor of becoming disciplined soldiers, and when commanded to go through military evolutions of any kind, they have ever shown a readiness and willingness to perform them. The militia on the other hand care nothing about their military trainings, and only go there for frolic and fun, and nothing else. He thought that upon the best reflection which the committee could give this subject, every man must bring himself to the conclusion that these trainings might be dispensed with ; and that they were unnecessary for the purposes for which they were organized, and that they had entirely failed to fulfil the purposes intended by the framers of the constitution of 1790. For all that could be said on this subject could not show that these trainings prepared men for actual service in the field. They are useless—they are worse than useless—they are ridiculous. The love of country which swells in every American bosom will soon prepare him for the field when his country is invaded, without these mock parades to prepare him. That love of country, with one week's discipline, will always prepare an American for war. Was it required of him to give evidence of this ? If so, he would point to the field of Lexington, of Monmouth, and of Bunker Hill. You will find there that, by a week's disciplining, were made officers who acquired an undying fame. A week's discipline was all that was necessary, when an American citizen was called upon to prepare himself for the field of battle.

He would now say a word in relation to the question of toleration, because he did conceive that that was now the question before the committee—view the question as you may, and it results in a question of toleration. Even the gentleman from Mifflin, (Mr. Banks) admits that it is a question of toleration, but says it is toleration in giving them a choice between bearing arms and paying an equivalent therefor. Now if a man is conscientious in the manner these petitions represent, this is no toleration at all ; there is no alternative in it. It is known that in this country and in this Commonwealth, there is a body of men denominated seventh day baptists ; and he asked gentlemen of this committee what was their belief—what was their creed. Why, sir, they believe that Saturday of our week is the Sunday of their week—that is their belief. Now he would ask the gentleman from Fayette and the gentleman from Mifflin, whether if a Convention was called to frame a Constitution for the Commonwealth of Pennsylvania, composed of a majority of seventh day baptists, they might not insert in their Constitution, that Saturday of the week was the Sunday of the week, legally to be observed as such. If that should be the case, he would ask gentlemen whether we would not remonstrate against that, and do it upon the ground that it was an interference with our conscience. Now, if it comes to this, that a majority has the power, that a majority gives the right to dictate in regard to conscience, we may go a step further and say and insert in the Constitution that Sunday is the only Sabbath, legally to be observed as such, and that no other day shall be observed as Sunday. If this was done, he would ask if it would not

trench upon the rights of conscience of that very respectable class to which he had alluded. He would say a word further in relation to this question of conscience, and then he had done. Gentlemen had treated this subject as an application on the part of the society of Friends, to be exempted from the payment of a *tax*. Now he trusted that the committee would not be misled on this idea of its being a tax. What do they ask? Do they ask to be relieved from the payment of a tax for the support of the government? By no means. They merely ask to be relieved from the payment of a fine. What is a fine? What is the legal acceptation of the word?—because it has a legal meaning. What does it imply? It implies a degree of neglect on the part of the person who pays the fine; and hence it is that the society of Friends believe that, in applying the word fine to them, you throw upon them a degree of censure for a supposed neglect. The society of Friends never fail to perform their duties to the government. He asked the committee when it was, that the society of Friends ever refused to contribute taxes to the support of the government. Why, sir, adopt this proposition and you do not relieve them from the payment of taxes. They pay their taxes as before, and those taxes go into the treasury of the State, and whenever your Legislature may see proper to levy a tax for carrying on a war, you will hear no complaints from the Quakers, because they hold it as a part of their creed to pay all necessary taxes to the government under which they live—to render unto Cæsar the things which are Cæsar's. He could not regard this question in any other light than as a question of toleration, and on that ground and that alone, he hoped the amendment might be agreed to, which would grant them the relief which they asked.

Mr. SHELLITO had a few observations to make on this question, and after the very brilliant display of talents which we have had, it was not to be expected that he could throw much light upon the subject. He was much pleased with the range the debate had taken. From the first, he had recorded his vote against striking out the clause which had been struck out—he was still of the same opinion, and every speech made in behalf of the petitioners strengthened him in the correctness of that opinion. He believed now that the old Constitution was better than any thing we could get, and he hoped it would be adhered too. In relation to these militia trainings we have heard a great deal said, a great deal of declamation without argument. He had heard them designated as corn-stalk boys, who were paraded only for the derision of the mob, and that they could never be of any service. Now, he would undertake to bring to the notice of the Convention some facts which had come within his own observation. During the last war, a draft was made upon the section of country from which he came, for these poor unassuming, much abused corn-stalk boys, to go out with General Harrison upon our western frontier, to defend it from the incursions of the savages, and their scarcely less savage allies of that day, the British troops. Well, they turned out, they joined the army, travelled through the wilderness, and did much good service to their country, without a single man of them deserting, so far as he knew. They were marched to Fort Meigs, and while there, their term of service expired, but did they then come home, and leave the frontier defenceless? No, sir—the new drafts had not arrived, and they volunteered their services in defence of that frontier until they should arrive. Then it was when there was a force there

adequate to defend the frontier, and then only, that they returned to their peaceful homes, to enjoy the comfort of their fireside. This, sir, was the conduct of the corn stalk men. On the other hand, he would bring to the notice of the committee the conduct of our volunteer troops on the northern frontier? He was in the town of Mercer when the glory and the pride of Pennsylvania volunteers assembled there, previous to their joining the army on the northern frontier. It was a proud day to him to see these troops shine out in all their splendor, like a sun in the firmament. They were well armed, well equipped, and well disciplined, and much was expected of them. But when they joined the army, and arrived at Black Rock, what was their conduct. He need not repeat it. It was known to all, and would to God that the veil of oblivion was drawn over it. It was not his purpose in what he said to disparage the volunteers. It would be unnatural for him to do. They were his countrymen, and some of his own relations were at present of their numbers, He had two sons belonging to volunteer companies, therefore, it was not to be supposed that he would say any thing to bring this class of our troops into disrepute. But as gentlemen had seen proper to draw contrasts between militia and volunteers, he wished to rescue the militia from some of the stigma which had been cast upon them. He merely wished to show the committee that these corn-stalk men were of as much service in the day of trial, as those men who shine out in the sunny days of peace, like butterflies in the middle of June. He was in favor of keeping up the system, and regretted that there was a class of persons in the community desirous of breaking it down, and bringing it into contempt by electing fools and idiots as commanders of companies or regiments. He considered the section of the old Constitution as the best which he could get, and when he could get the opportunity he would record his name in favor of it.

Mr. Woodward, said he should willingly have avoided making any further remarks on this subject, if the committee had been ready to take the question last night, but as there appeared to be a disposition to discuss the matter further, he availed himself of this opportunity to reply to some of the observations which had fallen from the gentleman from Allegheny, (Mr. Forward) and others on that side of the question. It seemed to him that the course of this debate required us to confine ourselves to the proposition contained in the amendment of the gentleman from Chester. Now the Constitution of 1790, contained an exception in favor of those conscientiously scrupulous about bearing arms, allowing them to pay a small contribution for personal services. This was testifying the respect which the framers of that Constitution felt for the tender consciences of this class of our citizens, but upon a vote of the Convention, this clause had been stricken out. It is now proposed to introduce a distinct amendment, going to exonerate all persons having conscientious scruples, from not only bearing arms, but the payment of any equivalent therefor. As all of the arguments of the other side, in favor of this measure, have been condensed and embodied in the very able speech of the gentleman from Allegheny, (M. Forward) I shall notice that speech particularly.

Mr. Chairman, there are no conclusions so strong and satisfactory to their author as those which are drawn from the *petitio principii*. The

gentleman has illustrated very ably the value of a question, begged in the speech which he has given us, founded on such premises. He took it for granted that there is not now, and will not be in future, any necessity for any militia organization.

Sir, do you sustain the militia upon any principle in Pennsylvania? He could not judge what necessity there was for keeping up the militia system in Pennsylvania, much less could he, or any other man judge what may be its necessity in future. All he knew was, that the Legislature, whenever it was addressed on the subject of modifying the system, and abolishing the trainings, turned a deaf ear to the petitioners, and not upon constitutional grounds, but upon the grounds of expediency, policy, and necessity. They held it indispensably necessary that the system should be kept up. This has always been a favorite system in Pennsylvania, and let them be branded as corn-stalk militia, or with what other name of reproach you please, he took it that the Legislature would never abolish the system. The Pennsylvania Legislature has from time to time decided that some kind of military organization must be sustained for the exigencies of war. Look at the messages of all the Governors of Pennsylvania, and what do you find on this subject? He had looked into nearly all of them, and he found, that they all concurred in opinion that the system ought to be kept up. They recommended, to be sure, improvements and reform in the system, but all agree in the conclusion that its organization in some form, and to some extent, is necessary for the safety and the happiness of the people of Pennsylvania. By all of them is the system recommended, from Governor M'Kean down to the present time. Through the whole line of the Executives of the Commonwealth do you see it declared that the militia system is necessary for the defence of the country, and the security and liberty of our citizens. Then he took it that it was the clear opinion of the people of Pennsylvania that this system should be kept up. He repeated that he knew not what the necessity for keeping up the militia was now; he knew not what it was to be in future; all he knew was that it had ever been a favorite measure in Pennsylvania, and he believed the people would never give up this right arm of their defence. They will cling to it and cherish it, and however you may endeavor to destroy it, by efforts to bring it into ridicule and contempt, they will not yield it. If there were evils in the system, as he had no doubt there were, leave it to the Legislature to correct them—let it be remodeled, reorganized, and reformed, but let it not be broken up and destroyed. He did not know whether the committee, or the Convention, in amending the Constitution of Pennsylvanina, would leave it with the Legislature to dispense with the system, or whether it would compel them to sustain and keep up the establishment; but whether it was made imperative, or left discretionary with them, he believed, and he said it now in view of the past history of Pennsylvania, that the Legislature of the State, knowing the wishes of the people, will never dare, wholly and entirely, to dispense with the militia system. They never have attempted to abolish the system, and they never will. We have had occasion for the services of the militia, and we may have occasion for their services again. We can only judge of the future from the past. The interests and the cupidity and the passions of men are the same now that they have ever been, so that the State is in the same danger now that she had been heretofore. He knew

not where or when she was to be attacked ; he knew not what destiny was in reserve for her: all he knew was, that the wisdom of the Commonwealth had decided upon the necessity of retaining a militia establishment, and he believed the same wisdom would continue that establishment; but whether in the form of corn-stalk mililia, or in the form of uniform volunteers, he did not know and should not trouble himself to inquire. The argument from the other side has all proceeded upon the false assumption, that no militia is necessary, and is sustained here by detailing the ridiculous scenes, which sometimes attend their public exhibitions; and which, as had been said, were always encouraged and sometimes occasioned by that portion of the community who are in favor of dispensing with all militia security to our Commonwealth. Now to go back to the starting point, he asserted that a militia organization was necessary to the security of the Commonwealth, and no gentleman had shown that it was not necessary, and no gentleman could show that the State had ever ceased to consider it expedient and necessary.

If gentlemen cannot sustain their conclusions without disposing of the militia, let them prove the establishment to be unnecessary, and not assume it—let them demonstrate that the State and her authorities have been under a mistake in fostering the militia, and let this be done, not by ridicule and denunciation, but by facts and argument. Until this is done, he should repose on the conviction, sustained by our past history, that the militia establishment is useful and necessary, and cannot safely be dispensed with.

Well, sir, advancing from this point, we learn that there is a body of men in this Commonwealth, who have conscientious scruples against bearing arms; conscientious scruples against conforming to the laws, providing for keeping up this necessary military establishment. Such a body of men he knew existed, and he admired and respected them for their many virtues, and believed them to deserve all the high wrought eulogies which had been pronounced upon their characters. There was no man who respected these people more than he did, and he believed them sincere in the professions they make on this subject. He would therefore place in the Constitution a protection for their consciences, by relieving them from doing military duty. He would take precisely the same ground taken in the Constitution of 1790, by the fathers of our republican institutions, The framers of the Constitution had precisely the same application made to them from the same source, and they took the ground, that no man should do military duty, who had conscientious scruples against bearing arms, but that the allegiance which he owed to the Commonwealth should be preserved, by the payment of a small contribution or tax; that he should pay something in lieu of the military service from which he was exempted. This was the ground then taken; this was the tolerance then practised; and such was the proposition that our fathers inserted in the Constitution, and which had been expunged from it on the motion of the gentleman from the county of Philadelphia. Now, when the gentleman from Franklin, (Mr. Dunlop) makes his motion to reconsider this vote, he would vote for it, and he would stand by that principle of toleration, wherever and whenever it was asserted. But what are we told by the gentleman from Allegheny, (Mr. Forward) what are all told who stand by the broad principle of toleration as asserted in the Constiution of 1790? We are told that it is

a revival of the fierce spirit of persecution of former ages; that it is the same spirit which planted the stake and kindled the fagot; that we are returning to the dark ages of barbarity; and that we are unmooring those hopes that have their anchorage beyond the stars. Why, any persons listening to these remarks, would have thought that we were introducing some monstrous and unheard of doctrine into the Constitution. Who are they against whom this argument is addressed? Individuals who, acting upon their sense of propriety, are in favor of retaining in the Constitution the very tolerance principle that has distinguished this Commonwealth and all other free governments upon earth. A principle which has always secured to all men the right to worship God according to the dictates of conscience, and to be exempt from the bearing of arms upon the payment of an equivalent. He submitted to the committee and to the country, whether the gentleman from Allegheny, in the warmth of his zeal, in favor of these petitioners, had not imputed to others more than the question demanded, or the circumstances of the case required. Whom do we propose to persecute? What is the system of persecution complained of? Who had brought forward a proposition for the persecution of any one? What amendment have we brought forward to persecute the friends? Yet the gentleman from Allegheny had made the insinuation that we desired to return to the practices of the dark ages. He repelled the insinuation. There was nothing in the discussion; nothing in any amendment which had been offered by any gentleman, and nothing in the course which any gentleman had pursued here, which justified the insinuation of the gentleman from Allegheny.

Mr. FORWARD, begged leave to explain. He asked the gentleman whether he could for a moment, have understood him as imputing motives of any kind to any gentleman here. The gentleman says he repels the insinuation. Mr. F. had made no insinuation. He impeached no man's motives, and he defied any man to put his finger upon a word of his argument which went to impeach the motives of any body.

Mr. WOODWARD resumed. He did not know how any intelligent gentleman could adopt the spirit, which characterized the darker ages and distinguished the fifteenth ceutury, without knowing it. and he did not know how any gentleman could be for reviving the fierce spirit of persecution, which planted the stake, and kindled the fagot, and for unmooring the hopes which were anchored beyond the stars, without knowing something of it, and if he do all this knowingly, his motives deserve to be impeached. But he did not understand these hair splitting distinctions, and this quarrelling about which was the north and which was the north-west side. He took the general scope of the gentleman's argument, and he had not preserved a note of a word which had fallen from his lips, but he now declared that the tenor of the gentleman's remarks in regard to the course we have thought proper to pursue, was of a character that the question did not call for, and that the tolerant course of the debate did not justify. He submitted however to the committee, the remarks of the gentleman, and the propriety of the notice he had taken of them, leaving the matter to be judged of by them. But to proceed with his argument. The gentleman has told us in the course of his observation, that this was indeed a tax; differing from other gentlemen on that side of the question—he tells us that it is a tax, but that it is a tax upon tender consciences. Now Mr.

W. denied this. He denied that it was a tax on tender consciences. It is not the conscience that is taxed, but the purse; and does the gentleman from Allegheny, mistake the one for the other? He trusted not.

It is the purse that is taxed for the *relief* of the conscience. The purse is taxed, out of respect for the conscience; and this is the kind of toleration which the people of Pennsylvania are always willing to regard; and this principle has been engrafted on our Constitution and become the law of the land, upon the ground that the consciences of these people are against the performance of military duty. This was the doctrine that he cherished: but who ever heard in this discussion the consciences of these people assailed, or who ever heard that this was a persecuting tax upon conscience? There may have been force in the gentleman's declamation, but there was no force in the argument. The Constitution of 1790, respects the scruples of those conscientious against bearing arms; but the man having conscientious scruples, pays such tax as the government enforces upon him. The Legislature of Pennsylvania had always decided that the militia establishment is necessary, and will always continue to do so. Now, sir, if the Legislature of Pennsylvania decided that the militia system was necessary for the safety, the security and the defence of the Commonwealth, how is it to be sustained without some kind of preparation, and where is that preparation to be made? Contributions are to be made for the purpose of purchasing arms, erecting of arsenals and paying the expenses of the militia, and when is all this to be done? It is to be done in time of peace. Then if conscientious scruples are to protect one class of men from making this contribution, it may another, and another, and when it becomes necessary to make these preparations, there will be no body to call upon to contribute, for all will be protected by their consciences. Once say that conscience shall protect men from making these contributions, and you will have but few contributors in time of peace. There will be no body to take the field, and there will be no body on whom to call for means to make the preparations necessary for the defence of the country. Carry out this principle, establish this plea of conscience, and where will it end? A whole Commonwealth may shield themselves under this plea of conscience, from contributing to the militia service, for the purpose of keeping up your miliatia establishment. Your State becomes defenceless, feeble and contemptible in the eyes of the world, your military spirit has fled, there is no protection for your citizens, you become the scorn and derision of the nation, and stand, inviting aggression from abroad, and encouraging sedition and rebellion in the bosom of your own State. If these gentlemen's dostrines become the law, where is the security for the citizens of this great Commonwealth, where is the security for the property of the Quakers? Where the security for your homes, your firesides, your wives and your children? On what arm will the gentlemen themselves lean for protection in the hour of trouble and danger? You become at once prostrate, feeble, contemptible, and a prey to every nation, who choose to prey upon you. But carry this principle further. Once adopt it and excuse this class of men from paying what he contended was strictly a tax; excuse them from paying a militia tax, when all along the Legislature has deemed it necessary to the well being and safety of the government, that the militia should be preserved, and what will be the next step you will be asked to take? Why, you will next be asked to excuse them from all

taxes that go to sustain your judiciary establishment. If militia taxes are yielded, judicial taxes must be on the same ground. The argument will tell with the same force against these, but with the advantage of a precedent. The Quaker never sues any body—he has no occasion for your judiciary—he is conscientiously scrupulous against employing it and of course against sustaining it. Every dollar he pays to sustain this expensive establishment, is a tax on tender consciences; and, as the Constitution has taken them into its keeping, and relieved them from military taxes which are indispensible to the existence of the government, *a fortiori*, these judicial taxes must also be forgiven. This will be the argument, and how will you escape from it? Adopt the principle, and conscience may become arrayed against one tax after another, until your government becomes a thing more contemptible even than a "corn-stalk militia"—a mere rope of sand. Aye, sir, the Keystone State, is to be without the power of collecting taxes for any purpose, because conscience chooses to step in and arrest the arm of the collector. This was the first step to an entire and utter dissolution of our government, and prostration of our Commonwealth. They might disguise it as they pleased; they might ridicule their fellow citizens when acting in a military capacity under laws of the State, but he proclaimed that the moment the power of the Commonwealth was set at defiance, when, in the judgment of the Commonwealth, that power ought to be exercised either in relation to the militia, to the judiciary, or to any other State object—its sovereignty would be destroyed—the State would be deemed contemptible, and would be split to atoms. He, for one, would never give his sanction to a step which he believed, if followed up, would inevitably lead to a dissolution of that government to which we all looked for protection, for our lives and our property.

But, he had been told that this was no tax. One gentleman had said, that it was no more a tax than was a fine for an assault and battery—it had been called a penalty—an amercement—any thing but a tax. He, (Mr. W.) did not contend that these military fines were called taxes, in our Constitution, or in our acts of Assembly, or, probably in common parlance. He was not, however, to be cheated by names. "The rose by any other name would smell as sweet." He looked at the substance of the thing, and he saw in this all the essentials of a tax. What was a tax? He would read its definition from Webster's dictionary.

"Tax;" derived from the Greek root "tago," is defined by Noah Webster, to be "to set, to throw on."

"A tax," says that author, "is a rate or sum of money assessed on the "person or property of a citizen by government, for the use of the nation "or State. *Taxes*, in free governments, are usually laid upon the pro- "perty of citizens according to their income, or the value of their estates. "*Tax*, is a term of general import, including almost every specie of im- "positions on persons or property, for supplying the public treasury, as "tolls, tributes, subsidy, excise, imposts or exactions."

This, then, continued Mr. W. was the definition of a tax; an imposition either upon the person or property for State objects. This was the general idea which we had of all taxes. He supposed that when a man was fined for an assault and battery, he had committed an offence which required punishment in some form, and this was the form which

had been prescribed by the law. But, he would ask, what law had that man violated who chose to pay a fine, instead of performing military service? Did not the law and the Constitution allow it? Did not every act of Assembly secure the right? And, when a man paid his tax to the collector, did he not act in conformity to the law? Was there any violation of the law? Did he become amenable to any legal tribunal? Not at all. He had simply accepted the compromise offered to him by the law of the land; either to do military duty or to pay a sum of money in lieu of it. And he had chosen the latter alternative. As well might we say, that a man was punishable by fine for not working on the high-ways, as for not performing military duty. We have laws which compel every citizen to work upon the high-way of the township in which he lived; but if a man chose not to march with his shovel and spade over his shoulder on the day on which he was notified by the supervisors to do so, he might pay a money equivalent or tax in lieu of performing personal service. Any man might do so. Was this like a fine upon a culprit—upon a man who had committed assault and battery? No—it was a tax—strictly, a tax. The law had said to him, in advance, that he need not work if he choose to pay a tax. And so the law said in the present case; you need not do military duty unless you choose. You need not do military duty, but you shall pay an equivalent for it. It was a contribution for a public object. What was that object? The defence of the State; to make preparations for defence in such manner as the law of our State might prescribe. This was the high and paramount object to which all men were bound to contribute, either by personal services, or by the payment of a pecuniary equivalent. This was the high and paramount object for which this burden was laid upon the mass of our citizens. And was he not then correct in saying it was a tax, and in comparing it to all other taxes assessed for State purposes? He was well aware that it was not called a tax; but, in his view, this, as he had before stated, was a matter of no importance. He looked at the essential quality of this thing. He saw that it was money to be paid for a great public object—namely, public defence against a foreign enemy, or domestic insurrection; and hence it was, that he inferred it was a tax and nothing but a tax. Standing then on this ground, let me ask if this amendment is not calculated to describe a circle round a certain portion of our fellow citizens and to erect them into a privileged party—a non-tax paying party? It throws over them a Constitutional shield from the demands of the public, because their consciences are tender. And what would be the apology of the members of that Convention to their constituents, when they went home, to the industrious farmers of the land, and told them, "we compel you to pay a tax for military service, whilst we have excused the most wealthy of our citizens from doing so" What answer should we make, when asked the reason of this fanatacism? We should answer, their consciences forbid them to pay, and we excused them.

But our yeomanry would see and feel the injustice and outrage, and if they did not pour upon us their contempt and indignation, he mistook much the character of the people of whom he spoke.

Never, until he was prepared to cut loose from all those sacred republican principles which constituted at once our pride and our security—

never, until he was prepared for a privileged church establishment in this land, would he vote for an amendment which involved results such as these. There was no escape here. Gentlemen might talk as much as they pleased, about taxes or their conscience. He would refer again to the authority which he had introduced the other day—he alluded to Proud's History of Pennsylvania—a work in which all the tenets of this respectable sect of christians were fully displayed ; and it would there be found, in so many words, that their consciences required from them the payment of every tax which the public authorities might require. Talk of taxes being against conscience, whilst here it was expressly declared, that it was the duty of every good christian to pay such taxes as the Legislature might impose. And the high authority for this principle is recorded in the language of our Saviour, when he commanded that tribute should be paid to Cæsar :—"Render to Cæsar the things that are Cæsar's, and unto God the things that are God's." And, continued Mr. W. who was Cæsar, but the personification of the power employed in persecuting the followers of the christian faith? Is it lawful, our Saviour was asked, to pay tribute to Cæsar, when mighty engines of power were engaged in overthrowing christianity, and in unloosing the faith of those whose *hopes are moored beyond the stars?* And what was the answer? "Render to Cæsar the things that are Cæsar's, and unto God the things that are God's." This was the reply of our Blessed Redeemer, and this was the principle on which the Quakers placed their argument when they said, that duty to the State, and duty to conscience, required them to pay all the taxes which the State, whose protection they enjoyed, might impose upon them. This was mainly the argument taken here ; and he was not to be stopped in his course by being told, that we could not dive into the depths of the human heart, and construe the consciences of men according to our own opinions. It was his duty to look at this matter according to the sense which he had. He knew that it was not for him to explore the hearts and the consciences of others. But when a class of men come before a body such as this, and asked extraordinary privileges —when they asked an entire exemption from the ordinary burdens of the government, he should take the liberty to inquire into their title to these privileges, and to look into the principle upon which they justified their demands—and he should never be deterred from the performance of this duty, by being told that the subject was sacred. He had before explicitly stated and he now repeated that he did not doubt the sincerity of professions which were made of conscientious scruples ; but when, in his representative capacity, as a delegate acting under the solemn responsibility which he owed to the people, he inquired whether the payment of this tax was a fit object to which to apply this matter of conscience by constitutional provision, it was necessary for him to discard all personal considerations. So inquiring anxiously, and conscientiously seeking to arrive at correct results, he could not find that the payment of this tax was a subject to which he could constitutionally apply this matter of conscience ; nor could he see that the subject involved in any degree the question of religious toleration. He had listened with much delight to the many rhapsodies which had been poured into the ears of this committee, on the subject of toleration of conscience. He listened at all times with pleasure, to eloquence on such a topic. But whilst he admitted that toleration of conscience should ever be held a sacred and inviolable prin-

ciple, he still contended that conscience had nothing under Heaven to do with the matter now under consideration. The great question was whether we should sustain, or abandon our government—whether it was worthy of receiving our contributions for its defence—or, whether it had become so much a matter of indifference to us, that it might be left a wreck on the ocean, at the mercy of the tempest and the storm. He repeated that it was no question of toleration of conscience. When the Convention, in the due progress of its labors, should come to that part of the Constitution which declares that no man shall be molested in worshipping Almighty God according to the dictates of his own conscience, the gentleman from Allegheny, (Mr. Forward) would find him willing to go as far as any body, in sustaining that great principle of our Constitution. But, he protested against every endeavour to connect this question of taxation with the subject of toleration of conscience. It was not so; the two matters were entirely distinct. The object was the defence of our State. Was it *unconscionable* to defend our families, our homes, our rights and our liberties? Surely, it was not so. The Quakers of other days did not judge that it was so. That man who spoke "as never man spoke" did not judge so. When the State in which we lived, and which protects us in the enjoyment of all our earthly possessions, imposed a tax upon us, it was right we should meet it. He granted, indeed, that the people might rebel; for this was one of their first and most inalienable rights. But on no other pretext, save that of rebellion, could we justify resistance against the payment of a tax. You must either be for us, or against us. You must either assert your allegiance by the payment of your taxes, or you must rebel and overthrow the government; and he granted, of course, that when the government became oppressive, tyrannical and intolerable, rebellion was a sacred and indefeasible right, and, in such case, he would himself join in it. But it was a question of payment, or rebellion; and if gentlemen could show him that our government was no longer worthy the support of honest and christian men, he would join them in the effort to overthrow it. But, he would do it manfully, by open and direct attack, and not by secret or insidious attempts to undermine it. He would not do it by interposing his conscience between him and his duty, and thus making it the apology for every dereliction from duty. The payment of this tax, he held to be necessary. If not necessary, it would never have been imposed; and, if necessary, should it not be paid? How could gentlemen justify a refusal to pay it? Upon what principle was it to be withheld? On the principle of religious toleration? Were we to be frightened by thus laying it to the score of religious toleration, and to be told that this was the ground on which the justification rested? He denied it; he denied most emphatically that there was any question of religious toleration here. It was simply a question of supporting the government. And if the necessities of our government rendered such a tax necessary, where was the conscience in all this Commonwealth which would refuse to pay it for the defence of our State, of our homes and our altars. We were not about to enter into a foreign war;—all we asked was, security and peace; and, for the purpose of enjoying security and peace, we should place ourselves in the attitude of defence. We should show the nations of the world that, whilst we are anxious to respect the rights and liberties of others, we are at the same time prepared to assert and

vindicate our own. This was the true, and the only proper course; and time and all history had demonstrated the truth of the maxim, that nations never were so secure of peace, as when they were prepared to repel force by force. And this, Mr. W. said, would bring him to another point in this discussion, to which he felt anxious to call the attention of the committee.

The gentleman from Allegheny, (Mr. Forward) if he (Mr. W.) had correctly understood that gentleman's argument, asserted that, on the principle of toleration of conscience, we were bound to excuse that class of our citizens holding conscientious scruples, from the payment of fines or, in other words, of an equivalent for military duty; but that in time of war, invasion or exigency, even Quakers, with their tender consciences, ought not to be, and should not be excused. This was what he (Mr. W.) had understood to be the position taken by the gentleman from Allegheny; if mistaken, he would be glad to be corrected.

Mr. FORWARD rose, in explanation, and inquired if the gentleman from Luzerne, would have the kindness to reflect whether he (Mr. F.) had said any thing of public necessity, as the ground of the claim?

Mr. WOODWARD resumed. He said, he did certainly remember that the gentleman from Allegheny had stated, that it would be intolerant to require from this particular class of men, either the performance of military duty, or the payment of an equivalent for it, unless in the event of some great and over-ruling public necessity—in the existence of which he (Mr. F.) would not excuse any man. This was his, (Mr. W's,) understanding of the general sense of the argument, and he now proposed to examine it. Let us look for a moment, not at what the society of Friends ask us to yield to them, but at what is asked in their behalf, by the gentleman from Allegheny. In time of peace, that gentleman asked that they should not be called upon either to perform military service, nor to pay an equivalent for it, because their conseiences were opposed to every measure of the kind. But then, he (Mr. W.) took the ground that this tax which was thus applied to preparations for defence in time of peace, was the very way to keep off a war. But this, it appeared, was against the consciences of these individuals. It was against their conscience to do that which would, in all probability, render the effective employment of military force unnecessary; but when the hour of difficulty and danger was at hand, when the foeman's foot was planted on our soil, when "the dogs of war" had slipped, then the conscience of the Quaker is to yield; and his scruples against bearing arms are to be regarded no more than if they had never existed. And it should here be observed that the whole force of the argument lay in the fact, that these particular individuals held conscientious scruples against the taking away of human life. This this was the "pith and marrow" of the argument; they would neither take away human life themselves, nor would they be instrumental in having others to take it away. And yet the argument of the gentleman from Allegheny, would compel them to do so; for, the very moment an enemy landed on our coast, the gentleman's argument required that they should smother the voice of their consciences; that they should march to the tented field in common with their fellow-citizens; and that there, whatever extremity was required, the still small voice of conscience should be hushed in the din and roar of bloody battle.

But "in these piping times of peace" where there was no danger to be apprehended, and when all those preparations might be made which would push off the danger of war, it might be, "to the last syllable of recorded time," conscience steped in and forbade them to do any thing which was calculated to sustain and perpetuate this happy reign of peace, this millennium of the Commonwealth. This was the strangest position in which he had ever seen so solemn a question placed by those voluntary advocates who came forward to vindicate it against that fierce and blood-thirsty spirit of the fifteenth century, which, if we were to believe what we were told, had found its way, at this late period of the history of the world, into the deliberations of this Convention. Conscience! sir, said Mr. W. I can not understand it, if such be conscience. I thought I had some knowledge of it; I thought I felt its monitions; but if it be made of such stuff as some gentlemen seem to think it is, I confess myself a stranger to it. If its purpose is to seal men's purses against taxation, it will not be wanting popularity, and the pulpit need not longer exhort to its cultivation. Conscience will flourish whatever else decays, and this amendment will plant it in many a bosom where it was never before suspected to exist.

But, continued Mr. W. it was to be remarked, as, he believed it had already been remarked, that the Legislature of the State was the judge and the only judge of the necessity of these military preparations. It was to be remarked, as it already had been also remarked, that all these fines were to go into the treasury of the Commonwealth, there to become subject to distribution by the law making power, in such way as that power might choose to direct. And who was that law making power? Were those persons who entertained these scruples of conscience excluded from participation in that power? Were they not fully represented therein? Was not their voice equally as potent as the voice of other classes of our citizens, in judging of the necessity which existed for this military establishment, as it was in judging of appropriations of money for any other purpose? Surely, it was so. One gentleman had remarked, in the course of this debate, that this class of our people was always to be found on election ground like other men; that they were fully as active, and fully as jealous of the preservation of their rights as any other men. There were no interpositions of conscience on such occasions. And he believed, so far as his (Mr. W's.) knowledge extended, that these men were always abundantly represented in our legislative assembly. Where then was their grievance? On what ground had they any right to complain? By whom was injustice done to them? Their peace and security, their lives, their liberties and their property were amply guarded by that legislative body of which they themselves were a component part. They had, in common with others, a voice in deciding at what time this military establishment was not necessary, and when necessary, whether the actual emergency had arisen, or not. He said that these men were the judges of the matter, because they were fairly represented in the body whose judgment was to control it. Of the time when defensive measures should be taken for the common weal, and of the extent to which they should be carried, and the character they should be of, were all questions for legislative decision, and these petitioners are fully represented in the Legislature. Where then, he would once more ask, was

the source of complaint here? What more had any set of men a right to expect at the hands of our government? Where was the ground on which gentlemen in this body were to be pronounced unreasonable, intolerant, and opposed to the free exercise of the rights of conscience? Was there any foundation for such charges? Was there any class of our citizens, whatever might be their peculiar opinions on religious or other matters, who were mourning because they were taxed without representation? Was there any class of our citizens mourning that they were enslaved? that they were oppressed? that they were weighed down by the burdens which our government imposed upon them, and which they had no voice in imposing? He had heard of none such; nor did he believe that any such were to be found within our borders. He believed that all classes of our citizens enjoyed their privileges alike—that they were all equally taxed, and all equally protected; and he could see no manner of reason for complaint from any quarter. It appeared to him that these men were represented every where; and if they could come to the Legislature, and could succeed in convincing the Legislature that no militia was necessary, that no trainings were necessary, and that, therefore, it was not necessary to impose any fines, let them do so. The door was open to them—and he proposed to throw no impediment in their way. But when, in the judgment of that legislative body, it might be necessary to insist on this performance of militia duty, and to exact a tax or fine as an equivalent for its non-performance, then he would say that no man in this Commonwealth, be his opinions what they might, had the right to interpose his conscience in open defiance of the law-making power, on the plea that compliance with the law, involved a violation of religious toleration, or the freedom of conscience. Let them be allowed to convince the Legislature of Pennsylvania, if they could do so, that no man should arm himself with a corn-stalk, to appear on training days at a militia muster. He was content with this. But when the day of emergency came, when peril was near, when a necessity for action had become apparent, he entered his protest against excusing one portion of citizens from the performance of duties necessarily imposed upon others. He desired that the blessings of our free governmen should be equally felt; he desired that its genial influences should descend like the dews of Heaven equally on all, guarding, protecting and blessing all men of all conditions—the high and low—the rich and the poor, alike. He would never consent to draw a sacred line of distinction around particular bodies of men: to say to those who have been so fortunate as to range themselves within that circle "you are free from taxation because you entertain conscientious scruples," and to say to those without it, "you are not free because you do not entertain these scruples, you have not conscience enough—but cultivate its tenderness, and it will entitle you to receive the especial favor of your government." Here indeed would be inducements held out to every coward and hypocrite—to every miser and traitor in the land—inducements which would tend directly to the destruction of the moral character of the State of Pennsylvania, and to the entire surrender of all the great bulwarks of our independence and our glory. To such results he, for one, would never contribute by his voice or vote.

He had said, however, that he was unwilling to set himself up as a judge upon the conscience of any man. He had also said, when he

had before addressed the committee on the same subject, that one objection which he had to the amendment was its universality. He would endeavor to show to this committee, that the power thus bestowed might be greatly abused—that it might protect many men who were utterly unworthy of protection. How utterly ridiculous, as well as criminal might the operation of this amendment prove to be! Every mean coward who desired to shield himself from personal service or responsibility, might say to the collector, that he entertained conscientious scruples. True, it might be that he had been engaged during the whole of his life in dissipation and vice; true it might be that his character was in every respect low and degraded; true it might be that he was in every sense a pest to the country in which he lived;—still, under this amendment, he had the power to throw himself upon the reserved rights of conscience, against the operation of this military tax—to say that he had a tender conscience, and that, therefore, he must beg to be excused. Such would be the operation of this amendment, if it met with the sanction of this Convention. So soon as the fines were levied, we should find one man after another evading and nullifying the operation of our laws, and stopping up our resources by thrusting between the treasury and its sources, a conscience, of the existence of which nothing had ever been heard before. This was the character and description of men who might abuse such a provision as was now proposed to be inserted in our fundamental law. It was not his intention, however, to apply these remarks to the society of Friends; he merely intended to argue that this provision, from the fact of its universality, might be made to comprehend, and to shield, every worthless renegade in the land, who was either too cowardly to perform military duty when required to do so, or too miserly to pay an equivalent for it. And he would much rather vote at once in favor of any provision which would go to exempt the society of Friends from all responsibility in the matter, than he would vote in favor of a provision which might cover not only that society, but a mass of men much less worthy of the consideration and respect of this body. Nay, he would go even further—he declared he would vote for a constitutional recognition and establishment of that society and church, infinitely sooner than he would vote for an amendment which went to overturn the foundation of our government, and to the absolute prostration of all those great principles, which lay at the very base of our institutions. But, he would ask this committee, whether they had any design to take such a step? Was it sincerely the intention of this body, to recognise one church to the exclusion of all others? He could not for a moment believe that it was. The other sects, numerous as they were in our Commonwealth, had asked no such constitutional provision to be made in their favor. The methodists, a denomination of christians, composing men of as pure and exalted principles as were to be found in this land—a denomination of which the country was full, though not so full as he would desire—had preferred no such request. To this sect a large body of his constituents belonged. They were men, too, of tender and enlighted consciences, and as much opposed to the wanton sacrifice of human life as any other portion of our people. But not a syllable had been heard from that intelligent and growing body of men. Thay had not come forward to vex the cares and harass the deliberations of this Convention by petitions of such a character. Then, again,

there were the Menonists—a large and highly respectable body of men; men, too, who entertained conscientious scruples against taking away the life of their fellow men, equally as strong as those entertained by the society of Friends. But they saw—they knew—that the surest way to avoid taking away life, was to place ourselves in an attitude of defence, by making some kind of preparation against an attack. They, therefore, had been silent. They had not harassed this Convention with petitions to be excused from the burdens imposed on others; they had not attempted to derive at the hands of this Convention some great political privilege that should for ever hereafter characterize and distinguish them. The society of Friends was the only body which had sent forth its petitions. Let that petition be treated respectfully; let it receive all the consideration to which the respectability of the source from which it emanated entitled it; let it be deliberately and candidly weighed; let those who favored the prayer of the petition be heard in its favor. But, when all this had been done, then let him (Mr. W.) be allowed, for one, with such conscience as God had given him, to say that they could not have that peculiar privilege; that they could not have that exemption which was for ever to distinguish them as the State Church of the Commonwealth of Pennsylvania. Let him be allowed to say, that they could have the benefits and protection which a great, a wise and a good government could bestow upon its citizens; but they never, with his consent, should be allowed to refuse to contribute their due proportion to the defence of the country; so long as they claimed that protection, and so long as they remained in the full enjoyment of it. He must be allowed to say, in all sincerity and candour, and with all respeet, at the same time, to the feelings of the society of Friends, that, whilst they lived under this government, they must either shew that it was unworthy of support, or they mnst contribute to sustain both the military, the judicial, and all other establishments which the law-making power of this Commonwealth considered it necessary to establish. So long as their churches and their church property, were all protected by the laws and the Constitution of the Commonwealth, he must be allowed to say, here and every where else, however much they might desire to avoid such impositions, still they must contribute to the public burdens. They need not do military duty, nor need they march out in defence of their country. If there was any thing in the nature of the service, which ran in conflict with their peculiar opinions, and forbade them to enlist as soldiers, they need not do so. They need not be compelled to take away the life of their fellow man. They might remain peaceably at their fire side, whilst the mass of the people of Pennsylvania turned out, marched to the field of battle, and exposed their lives in the cause of our common country. But, of the abundance of this world's stores with which they were blessed, let them contribute something to the common cause; let them do something at least to testify their affection for the government which thus protects them, by contributing cheerfully their proportion towards its maintenance and support. He proposed to lay no tax on their consciences; the only demand he made was upon their purse. And upon what principle of justice, or equity, could that demand be resisted? Under what right of conscience could it be evaded? He knew of no such princlple—he knew of no such right. He would

admit that the gentlemen from Allegheny, (Mr. Forward) in begging this whole question, as he most undoubtedly had done, had made the argument his own and the conclusions his own. But when we looked to the facts, when we looked to the history of the Commonwealth of Pennsylvania as it was—when we looked to the character of our people —when we looked to the history of the provision in the Constitution of 1790,—when we looked to that provision merely as a tribute paid to a tender conscience, and to religious toleration, he (Mr. W.) denied that either the argument or the conclusion, belonged to the gentleman from Allegheny.

Mr. Forward rose, he said, to make a few brief explanations of the remarks which he had offered yesterday to the consideration of the committee. He felt the more anxious to do this, because it was to him a matter of some concern, that the sentiments which he had expressed, should be rightly understood, both here and elsewhere. In the first place, then, he would remark that he had not stated, as had been imputed to him, that this was a tax upon conscience. No such language had ever escaped his lips. In reply to the argument which had given to this equivalent for non-performance of military duty, the character of a tax, he had said that, if it was a tax, it was a tax upon conscience; but that, whatever name might be given to it, it was, in fact and in substance, what was called by law, a penalty or fine; and that this was not only its legal character, but its true and proper character.

It would be remembered that one of the gentlemen who had addressed the committee on this subject, had taken occasion to dwell upon the absurdity of the doctrine of non-resistance and non-combativeness. It would be recollected, also, that it had been further pressed upon the consideration of the committee, that this was a tax, and nothing more nor less than a tax. In adverting to these arguments, he (Mr. F.) had taken occasion, fairly taken occasion, to say that, in the 15th and 16th centuries, one of the main arguments brought against those who had been brought to the stake, and suffered martyrdom by the fire and faggot, was that they had been guilty of absurdities; that their opinions were erroneous, and that they must know better than to believe in them. This was what he had said, and no more. In relation to tax, he had made the remark that, in other countries, contributions to the support of a national church, were levied as a tax,—that they were called by the name of a tax, and that this was essentially a tax upon conscience. Such was the ground which he had assumed, and he had yet heard nothing which should induce him to change his view of the matter. And now, when he had endeavored to point out the consequences of what he believed to be an erroneous argument; and when he endeavored, by such force of reasoning as he could command, to persuade a gentleman to review his opinions, and to re-consider his arguments; when he had endeavored to show, with historical truth, that the argument which had been here used, was the very argument which had been used in former ages of the world, against those who had been persecuted to death for opinions' sake; when he did this, and when, in a spirit of liberality and candor, he invited the gentleman to look at the consequences of his own argument, he was then told that he charged that gentleman, and others who entertained similar opinions, with introducing this argument for the purpose, and with the intention, of adopting the

absurdities, and fanning into existence the fierce and blood-thirsty spirit of persecution which characterized the 15th century. Now, he would ask this committee, whether any man, looking fairly to what he (Mr. F.) had said, could so far have misunderstood his argument as to build up, on its foundation, such imputations as these? Had he taken any undue advantage in his remarks? Was it not fair to deduce absurd or erroneous consequences from the arguments of those who entertain different opinions from ourselves? Surely it was fair. And yet, for simply doing this, was he to be charged with imputing to others, questionable motives, or a design to revive absurd doctrines? All that he had said was by way of warning; to show that the argument used on this floor, was the same which had been used in the 15th century, and for this, the gentleman told him that he had charged upon him (Mr. W.) the oppression of the 15th century. If this was the only mode in which the gentleman from Luzerne was willing to treat the matter, there would be an end at once to all further discussion.

But there was another explanation which he (Mr. F.) felt it necessary to make. If his worthy friend (and he trusted the gentleman would not repel this appellation,) would take the trouble to turn to his books on logic, he would there find that one very common mode of sophistry consisted in mis-stating the argument of our adversaries; and he (Mr. F.) thought, if he was not much mistaken, that the gentleman would also find this characterized as not a very reputable kind of sophistry; because, in every event, an antagonist was entitled to fair dealing. What was the proposition which had been made by himself? Was it to dispense with the militia? Not exactly so. What was the language he had made use of? Was it that of ridicule towards the militia? Not at all. On the contrary, he had stated, in so many terms, that he was willing to rely upon them, in one form or other, as the right arm of our national defence. This was the idea he had expressed; and was he holding them up to ridicule when he said that they were a part of ourselves—that they came directly from among us? And yet the gentleman from Luzerne, would insist that he (Mr. F.) had treated the militia with ridicule or contempt, and had endeavored to bring odium upon them. The gentleman had put words into his (Mr. F's) mouth, and ideas into his argument, which he had never applied,—but which, on the contrary, he utterly disclaimed. His argument had been expressly this:—that he would dispense with the militia trainings; because, so far from being productive of good, they were, in his opinion, serious and unnecessary evils; and, for this reason, he was not willing to compel men to attend the trainings, or to subject them to heavy penalties, if they did not attend.

In re-stating his proposition to them—which, he repeated, he felt anxious to place it in such a light as to prevent the possibility of misapprehension—he would again say, that he had confined all his observations to the militia musters. It was these that he considered to be entirely useless, and which, therefore, he desired to see abandoned. But the gentleman from Luzerne had given to this argument a much more extensive and important bearing than he (Mr. F.) had ever intended it to bear. Would you, asked that gentleman, make your government a rope of sand? And how, Mr. F. would inquire, was such a position to be, by any rule of construction, drawn from the argument he had submitted? If we

dispensed with the militia, we were asked, what would we do? In what condition should we be left, if we were to lop off this right arm of our defence? Sir, said Mr. F., I do not feel myself bound to answer this question, for the plain reason that I have never put forth any such proposition. And I now retort upon the gentleman from Luzerne, who has thus disingenuously dealt with my argument—whether he intends to say that this government relies for her safety and protection upon these militia trainings? Can the gentleman seriously mean to assume this ground? My proposition, the whole scope and bearing of my argument, had application to a time of perfect peace, when there was no alarm of war, and when we had no reason to anticipate that there would be any. This was the whole of my argument—I went not a step beyond it—and yet the gentleman from Luzerne makes me say, that I would dispense with the militia—that I would abandon the means of national defence—that I would do nothing to keep it up; and then he closes with the inference that, if it cannot be kept up, it is impossible that the government of our country can be held together. When the gentleman from Luzerne shall next condescend to notice any argument of mine, I shall thank him if he will not put into my mouth, words which I have never used, but which, on the contrary, I expressly repel.

The question, after all, Mr. Chairman, resolves itself into this:—whether the system of militia trainings deserves all the support and encouragement at the hands of this Convention, which have been given to it by the gentleman from Luzerne? To my mind it is not; but, at the same time, I do not choose to be held up to the people of this Commonwealth as casting ridicule on the militia,—a part of whom consists of my friends and acquaintances—but as going still further, and putting forth the proposition that the militia ought to be entirely dispensed with. Sir, I do not choose to be placed in this false attitude, by the misapprehension or the sophistry of any member of this body. But, when I addressed the committee before, I stated—and I think the gentleman from Luzerne ought, in all friendship, to have noticed the fact—that almost every man was holding the militia trainings up to ridicule; that the militia themselves laughed at the exhibitions; that they scouted them; that they despised the service, and that all men knew this to be true. And for stating this well known fact, I am made to say that the militia were ridiculous, and that they were deserving only of contempt. Sir, I said no such thing. I never intended to say any thing of the kind. I repudiate it altogether. It does not belong to me. Let those who think proper, claim it as their own; I have nothing to do with it.

But, Mr. Chairman, I have one further explanation to make, and I shall leave the subject with the committee. The gentleman from Luzerne had been pleased to say, that I would not exact from persons having scruples of conscience, the duty of bearing arms in a time of peace, when there was no enemy invading our soil, and no danger threatening us; but that, in a time of war, or in a case of emergency or anticipated attack, I would no longer respect their conscientious scruples, but would compel them to go to the field of battle, and shed the blood of their fellow-men, as though no such scruples had ever existed. And, sir, the gentleman is pleased to think that there is great absurdity in this. Now, what I said was, that in entering into

society formed for the general good of the whole body, certain of our natural rights were, of necessity, surrendered to the government. And I said that this right of conscience never could be, and never had been deemed to be, surrendered, except on grounds of some great over-ruling public necessity. I said that, in the event of war, (although I did not intimate this as being my opinion, but merely alluded to it as an argument which had been broached by others,) it might be fairly said, that this necessity for the surrender of all these scruples to the general good, actually existed, and that, therefore, their natural rights were to be given up on the altar of our country. But, sir, I never said that the Quakers, or Menonists, or Amonists, or any other denomination of people holding these scruples of conscience, should be compelled to go to the field of battle, and to shed the blood of their fellow-men. On the contrary, I stated my belief that it was not right, in this age of the world, to compel a man to take up arms, and to shed blood in despite of the dictates of a conscience which tells him that it is wrong and sinful to do so; but I expressed my opinion that, in time of exigency or war, he ought to be compelled to pay an equivalent for his personal services; that is to say, that he ought to be required to contribute towards the public service, his proper proportion of those means which were necessary for the defence of the country. This is what I said, and not what the gentleman from Luzerne imputes to me. He has imputed to me, in fact, the very contrary of what I did in reality say. In reference to the observations of the gentleman, that we were about to create a privileged class, and to bestow on that class immunities and privileges which we denied to other portions of our citizens, I have nothing to remark. We are not to be prevented from advocating and contending for a sacred principle, on the ground that we are about to create a privileged class. If the principle of toleration is not sufficiently respected to furnish an exemption from a general rule, of one man in many thousands, it seems to me that we cannot boast much of its existence among us. If such a rule of conduct as this is to be adopted, we shall put down the principle of toleration in our government for ever. Who had ever heard of such a thing as a principle of toleration being applied to all men? And, if not applied to all men, what came of the fears and forebodings as to the stability of our government, which had been so emphatically expressed by the gentleman from Luzerne, if this principle is made a part of our fundamental code? This, however, is not the question. It is deemed, by the gentleman from Luzerne, to be enough to repel this claim, to say that, by granting it, you establish a state church, because the claim is not universal. The gentleman is entitled to the full benefit of all his arguments in this matter; he may rest satisfied with them, if he is so disposed. I leave them in his hands.

He desired to make one more explanation. He did not say, or insinuate, with all deference to the gentleman from Luzerne, (Mr. Woodward) that any experiment for taxes to support government, was proper. In the sacred volume, he knew it was said, "render unto Cæsar the things which are Cæsar's," and they were so rendered. And he knew it was also said, "the powers that be are ordained of God." And he also knew, that the first and second Charles, James the first, Louis the fourteenth, and all monarchical governments, had adopted this passage, in order to sustain the doctrine of the divine right of kings. But did he

attribute to the gentleman from Luzerne the design to support the divine right of kings? No. But they all cited precisely the same argument; "Render unto Cæsar," &c. Could this be carried out to a tyrannical extent? And could the tyranny be exerted on the ground that it was right to "render to Cæsar the things which are Cæsar's?" Cæsar, he thanked God, was not here; although there were many, perhaps, who had been waiting and wishing for him for some years past. This much by way of explanation; and here he would leave the question as he found it.

Mr. Cline, of Bedford, said, that after the able argument of the gentleman from Luzerne, he would have thought it unnecessary to trouble the committee with any remarks, if it had not been for one position of the gentleman from Allegheny, (Mr. Forward) to which neither the gentleman from Luzerne nor any other gentleman, had adverted.

He (Mr. C.) had the honor to be nominated by the President of the Convention as one of the committee on the ninth article; and when the report on this subject was made, he did not give his assent absolutely to the proposition contained in it. He was willing, however, that the chairman should make the report, reserving to himself the right to state his opinions at the proper time.

But he did not now intend to go over the whole ground, but merely to advert to one proposition of the gentleman from Allegheny, to which he could not give his assent, and on which the whole of the argument of yesterday had turned. The speech of the gentleman was learned, able, and eloquent, but it failed to convince his (Mr. C's) reason and conscience. The gentleman had affirmed that the right of conscienee was a natural right, with which no one had a right to interfere. He (Mr. C.) wished the gentleman had stated what he meant by a right of conscience. I know (said Mr. C.) that a man is at liberty to exercise his conscience. I know that I am at liberty to exercise reason, understanding, and will; but it would be an awkward expression to speak of the right of reason, understanding, and will. It is equally so to say right of conscience. We might say it was the conclusion to which a man comes after the exercise of his reason, and the faculties which God gave him. If we could be in error as to reason, so we might be as to conscience; so then, if we entertained scruples, they would be founded in error. What right had any man to say he had come to certain conclusions on the subject of the agrarian system, and that he had a right to share my property? I (said Mr. C.) could not submit to this conclusion. The government would not. If the government would, it was a state of things which he trusted never to see prevail in this country. Therefore, he must say he entertained great doubts as to these scruples of conscience. And he held these doubts, and made this declaration, with great deference to the gentleman from Allegheny, whose argument was most happy, able, and impressive, but the premises were not founded in reason. He (Mr. C.) did this also, with the utmost deference to that respectable society which made this appeal to the Convention, and he confined what he had to say to that class.

There was something highly imposing in a respectable, influential, and philanthropic class of citizens making such an appeal as had been presented to this body. But his sense of duty would not allow him to

say that the appeal itself would have weight with him, because he felt that respect for the class. He was bound to look also to other classes, and to decide if this appeal was founded on principles of justice to all—that it looked to the interests of the whole community, and asked such privileges as no one would have a right to complain of. He was about to use an expression which might appear to be harsh: that so far from regarding the objection of this respectable class to personal service, or an equivalent, as a matter of conscience, he was disposed to regard it rather in the light of a religious prejudice than a conscientious scruple. Had they ever retired from the world, and in the seclusion of their closets, closely and deliberately investigated the question, whether they ought to bear arms or not? It might be asserted that such an investigation had been made, and that this had led to the conclusion to be found in the appeal. But he had doubts of this, because there were other sects, entertaining similar opinions with this society, who had never come to these conclusions, which we might be told this society had arrived at, after close and ingenious examination, as the result of reason and investigation.

Had we not found a man who entertained a peculiar set of opinions, propagate them with such industry and success, as to produce extended error throughout the world? He could not believe that these memorialists came to this body entirely free from prejudice, without permitting the opinions of their ancestors to have some influence in bringing their minds to the conclusion that they are right.

He had said this appeal was made from a source which was entitled to the greatest respect; and it had been advocated, not by one, two, or three, but by a number of gentlemen, with an ability far beyond any which he possessed; but while he said this, he was bound to look at the matter as it really is. It had been very correctly asked, why had the whole ground been changed? Why had the original position been relinquished? Who yesterday could have inferred, from his commencement, that the gentleman from Allegheny would have come to the conclusion which he finally reached? The argument he had listened to with pleasure, but when the gentleman came to the conclusion, he (Mr. C.) could not but regard it as "most lame and impotent." What was his position? That the only desire of the society of Friends was to be exempted from service in time of war, not in peace. It was an argument then applicable only to one alternative.

Was there any danger that the militia, in time of peace, would try to cut the throats of their neighbors? What would be their object? If they were exempted at any time, should it not be in war, and not in peace? Was not that the prayer of the memorial? A respectable delegation of Quakers had solicited this from the committee, and he was present at an interview between them and the committee on this subject. They then stated their wish to be exempt, not in time of peace, but of war, and to be exempt, not only from personal service, but from the payment of any equivalent for it. We should do great injustice, in his opinion, to the great body of our fellow citizens, if we granted this prayer, and imposed an obligation on one class of citizens from which we exempted another. True, it was said that all citizens were at liberty

to avail themselves of conscientious scruples on this subject. But this would not be tolerated: he could not think that it should be tolerated.

In regard to the freedom of conscience, he was willing that it should be secured to them. But why? Because that implied only the privilege of exercising their religious belief in a manner that would not conflict with any law for the support of the government. We give to all a right to worship the Deity in the manner most agreeable to their own consciences; and further than this no State had gone. No State Constitution contained a provision for the complete exemption of any portion of its citizens from personal service, or an equivalent, on account of conscientious scruples. He was of opinion that the Legislature ought to have the power to make the exemption; but not with reference to one class alone, but all classes and sects. He was inclined to believe that the militia trainings were of little or no value for any purpose; but he would not exempt one class from a duty that others were obliged to perform, on account of the religious scruples which the favored class might entertain. There was something in the character of these scruples which he could not understand. They were not palpable and tangible. He could not grasp their meaning. The gentleman from Allegheny, (Mr. Forward) who had spoken so eloquently on the subject of the rights of conscience, might well understand it. But in his mind, there appeared to be great danger in allowing every man to say, that, on account of this or that conscientious scruple which he entertained, he could not give his support and obedience to a law of the land, however necessary might be that law for the well being of the country. Such a principle would be productive of the greatest confusion and perplexity. A man might, on the score of conscience, refuse to pay his tax for the support of a pauper, on the ground that the pauper had worked in a distillery, and might work there again, contrary to the conscientious belief of this man, that distilleries ought not to be, in the most remote manner, encouraged. Many laws might, in some way or other, be found to conflict, or they might be imagined to conflict, with the conscientious belief of mere individuals.

The gentleman's position, in regard to the rights of conscience, he could not understand. He may understand it, and so may you, Mr. Chairman; but to me, it appears to be very vague and indefinite, to say that a man shall be exempt from obedience to laws concerning which he may have conscientious scruples. A man might memorialize and petition for the redress of what he conceived a grievance, but until his prayer was granted, or the government dissolved, it was his duty to submit to the powers that be.

He was in favor of striking out the whole report; and he should vote against the amendments, and in favor of the present provision of the Constitution, if it should be somewhat modified.

Mr. Scott would ask the indulgence of the committee for a few minutes, while he explained the reasons which would govern his vote on this question. He had, he said, a deep and abiding impression that the liberties of no people could be maintained, unless their yeomanry were armed and disciplined. This principle was at the foundation of national independence and national freedom. It was important in reference to national defence from foreign aggression, and still more so for

the support of the liberties of the people against domestic invasion. All history showed that no nation could retain its liberty in opposition to the ambition of its own rulers, unless the people were armed and disciplined for their own defence. The assaults of a foreign force even upon an unarmed people, could not long prevail. Much injury might be done, and many lives sacrificed, but the spirit of the people would rise with every defeat, and the invaders would be ultimately repelled. But against domestic tyranny, the only security of the people is an armed and disciplined body of militia. It might appear strange to hear an American talk of danger at home; and at this day, all apprehensions of that kind might appear visionary. But, on two occasions within our brief history, and since the adoption of the Federal Constitution, the government has been supposed to be in danger. A large and respectable party, during the administration of the elder Adams, declared that the government had undergone a change; and under the administration of the late Executive, there was a large party, embracing vast numbers of intelligent and patriotic citizens, who said that the government had undergone a revolution. I, said Mr. Scott, do not say that either one party or the other was right, but still we have the fact that, before the government was a half century old, there were, on two occasions, a moiety of the people who were deeply agitated with the apprehension of this danger. If ever there should be more than an apprehension of this danger; if ever a serious blow should be aimed at the liberties of the people, it was only by arms and discipline that it could be resisted. On this principle were based the words of the Constituiton, which assert in a manner so beautiful, that "The freemen of this Commonwealth shall be armed and disciplined for its defence." How is this to be done? To a certain extent they have been armed and disciplined, and in virtue of laws made in pursuance of this clause in the Constitution.

The volunteers, upon whom such high praise had been bestowed—and too much praise could not be bestowed on them—were armed and disciplined, and now exist under this clause. Whence are their arms? From the public depots and arsenals. How are they created? Under this clause of the Constitution. Their officers are appointed, and under this clause; they are organized into battalions, and under this clause of the Constitution. How was the spirit aroused under which all this had been done, but under this clause of the Constitution? By that clause of the Constitution is this spirit to be preserved, and, therefore, I am opposed to any amendment which shall break it down, and prevent us from carrying out the beautiful principle, that the freemen of this Commonwealth shall be armed and disciplined for its defence.

Mr. S. said he would now consider whether the amendment proposed by the gentleman from Chester was consistent with the doctrines which he advocated. In his opinion the amendment went to enforce that clause. It would arm and discipline the great body of the freemen, and yet save the feelings and conscience of that portion of our citizens who entertain scruples of conscience as to bearing arms. Let us examine the extent of this amendment, and see how far it differs from that clause of the Constitution which I so earnestly advocate. That very clause exempts from bearing arms those who conscientiously scruple to do so. That very article asserts the principle that those who entertain conscientious

scruples shall not be compelled to bear arms; and to this exemption it adds a qualification. What is that? That they shall be compelled to pay an equivalent for personal service. How far then does the amendment of the gentleman from Chester differ from the clause? His amendment provides that they shall not be compelled to bear arms, and so far they agree. Then it provides that, at all times of war and public exigency, they shall pay an equivalent for personal service. Mark, Mr. Chairman, how small a difference there is between the amendment and the original clause. There is scarcely a hair's breadth of difference between them. The exemption shall exist only when there is no war and no exigency. What is the meaning of the word "war?" It means that space of time when hostilities are in progress—that is plain; but to define the meaning of the term "exigency," will be more difficult. But this very difficulty itself serves to narrow down the privilege to a small compass, and it is left to the Legislature to say what shall constitute the exigency. In case of the occurrence of circumstances which justified an apprehension of war, even at a distant time, would it not be competent for the Legislature to say that the "exigency" contemplated by the Constitution has occurred? Certainly it would be. The limit of the exemption would, after all, be left to the Legislature to prescribe. The question then simply comes down to this, whether it is necessary to provide, at this period of time, when there is no strong occasion for it, that there shall be no exemption, and that the same duty shall be required from every citizen as in time of actual war, or of the exigencies arising from an apprehension of war.

Let us, said Mr. S., look at the question in another point of view. Suppose the Legislature should lay a tax of two hundred thousand dollars for the provision of munitions of war. There was nothing in this amendment that would exempt any one from paying his portion of the tax. Adopt this amendment, and there is nothing in it to prevent the Legislature from taxing citizens, including the Quakers, to the whole extent of their private fortune, for the purchase of arms and munitions of war. The extent of the provisions of the amendment has been misunderstood, and he put that case to illustrate it, and also for the purpose of deducing from it this position, that by this amendment we exempt the Friends and others who entertain scruples, from nothing but personal service. There was no tax nor contrivance, for the purpose of military preparation, from which any one could by this provision be exempted, and its single and sole aim and effort was to relieve them from personal service, and they were exempted before by the existing Constitution.

I do not, continued Mr. S., regard this as an exemption from a tax. I do not regard this duty of taking up arms as a tax. I recognize in it a privilege, of which no citizen is to be deprived—the high privilege of a freeman—the privilege to bear arms. This we are not to regard as a tax or a burden. It is a duty to the public and a right appertaining to the character of a freeman; and in the old Constitution, which was framed at a time when men scrupulously criticised every word they used in such an instrument, the word "equivalent" is employed, from a knowledge that the term "tax" would be inadequate for the idea intended to be conveyed. By the word "tax," we invariably understand a pecuniary contribution, of general and uniform character, assessed upon all citizens

and holders of property for the general good. That is the well known meaning and character of the word "tax;" and, in the Constitution of the United States, there is a provision to secure uniformity of taxation. The Constitution uses the word "equivalent" for the reason that it does not mean a "tax," from which no one, as its framers knew, could be exonerated. It only said that these persons should not be compelled to perform this specific duty.

The argument of conscience, Mr. S. said, had been so ably and eloquently presented to the committee, that it would be unjust for him to go into it. He would pass it over, therefore, with a single remark. As an argument, it had been pressed with a very important qualification; that all scruples should yield, at all times, to public necessity. Now, when this was admitted, when it was conceded that the persons asking exemption shall submit to the paramount claim of public necessity, all that is required is given up. It is put into the power of the Legislature at all times to determine when this public necessity exists. Certainly, gentlemen can find nothing alarming in the doctrine of conscientious scruples, with such qualification as this. But who, it is asked, holds these conscientious scruples? How shall it be ascertained who entertains these scruples? Will it be competent for me to say to the tax-gentlemen, I have a scruple, you can collect nothing from me? That, too, will require legislation. It must not be left in the power of every man to start up and say, I have a conscientious scruple, and am exempt. It is competent for the Legislature to direot the mode in which the existence of a conscientious scruple shall be ascertained. It would not be permitted, for instance, that a young man who has broken through the discipline of the Quakers society and borne arms, should, when he chose, afterwards again avail himself of his original scruple to evade the duty. It would be found necessary to make some general provisions with a view to determine what are conscientious scruples, and how they shall be ascertained.—That would be an important check upon any abuse of the exemption, and would fully meet the objection that the provision will put it in the power of any one, by mere word of mouth, to evade the performance of military duty. But who believes that any person would make such a claim for the sake of getting rid of this duty in time of peace? Without treading further upon this ground, he would now beg leave to introduce another topic—one, however, which had already been forcibly argued by his colleague on his left, (Mr. Chandler.)

In all ages and nations, the people have deemed it consistent with their obligations to themselves, to acknowledge, by suitable remunerations, the services of great benefactors; individuals, families and provinces, had been distinguished by the high rewards bestowed on them by a grateful people, in remuneration and memorial of their great services. This has been the practice in monarchical governments, and there is no reason why a free people should deprive themselves of the power of fixing the stamp of their approbation on individuals and bodies of men who have rendered signal services to the public. He would not set up for the Friends any overweening and exclusive pretension to exalted merit.—But he could not forbear to see in that society the founders of the Commonwealth. They laid the basis of our prosperity. They did establish the great principles which to this day have never been lost sight of, and

the influence of which will be felt to the latest posterity. He could point to the tenets of Pennsylvania on the subject of slavery; to the establishment of the first penitentiary system; and to the amelioration of the criminal code. He could, he said, enumerate other great principles which had been infused in the legislation of Pennsylvania and which derived their origin from the society which laid the basis of this Commonwealth. He had forgotten one thing which he had intended to name, as distinguishing the policy of this Commonwealth from that of any other of the colonies here founded—he meant the terms of intercourse between the original settlers and the aborigines. How proud would be the situation of a Pennsylvanian, when, in the national councils, any question should arise in relation to the amelioration of the criminal code, or to the abolition of slavery, or to our intercourse with the aborigines—our whole policy in relation to which had been marked out by the society of Friends. It was not a boon that was proposed to be given to this society, but the distinction was asked as resting on their old privileges and laws, which had not yet been wholly wrested from them. This noble and venerable mansion was once theirs, all its rooms and furniture were theirs. They had a right to prescribe the terms on which all who sought admission within its walls, should be permitted to enter. One small apartment was all that was now left to them. The new comers had crowded them out of every other. One solitary chamber and place of rest was left to them, and they only asked the privilege to remain there. You have the hall. the chambers, the stairways—leave us, they ask, our private room, to which we may retire in safety. The privileges which they claimed by charter they had a right to perpetuate. He apprehended that these were the feelings and principles which induced our forefathers, when they adopted the present Constitution, to insert an exemption for them from the duty of bearing arms. From respect to the original owners of the splendid edifice which we inhabit, he was willing to place his vote in favor of such an amendment as will save their feelings, while, at the same time, it will not hazard the public interests.

The question being on the amendment of the gentleman from Chester, as modified,

The yeas and nays were required by Mr. M'Cahen and nineteen others, and were as follows:

Yeas—Messrs. Agnew, Ayres, Baldwin, Barnitz, Bell, Biddle, Brown, of Lancaster, Carey, Chambers, Candler, of Chester, Chandler, of Philadelphia, Chauncey, Coates, Cochran, Cope, Craig, Cunningham, Darlington, Denny, Dickey, Dunlop, Farrelly, Forward, Hopkinson, Jenks, Maclay, Martin, M'Dowell M'Sherry, Meredith, Merrill, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Royer, Russell, Scott, Serrill, Snively, Stevens, Thomas, Young, Sergeant, *President*—44.

Nays—Messrs. Banks, Barclay, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clapp, Clarke, of Beaver, Clarke. of Indiana, Cleavinger, Cline, Crain, Crawford, Crum, Curll, Darrah, Dickerson, Dillinger, Donagan, Donnell, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Kerr, Krebs, Lyons, Magee, Mann, M'Cahen, M'Call, Merkel, Montgomery, Myers, Nevin, Overfield, Pollock, Read, Rogers, Saeger, Scheetz, Sellers, Seltzer, Shellito, Sill, Smith, Smyth, Sterigere, Stickel, Sturdevant, Taggart, Todd, Weaver, Weidman, White, Woodward—76.

So the question was determined in the negative.

A motion was made by Mr. DUNLOP and Mr. DARLINGTON,

That the committee of the whole reconsider the vote of the 21st inst., on the amendment of the report of the committee to whom was referred the sixth article of the Constitution, to strike from the fourteenth section of said report all after the word "law," in the line, as follows, viz: "Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service."

Mr. INGERSOLL said, he should vote against the motion to reconsider, but if it prevailed and if the state of things which he had supposed to be settled, and which he believed to be the best settlement of it, was overthrown, he should then offer a substitute for the clause, providing that the freemen of the Commonwealth should be armed, trained and prepared; with the exception of those who shall obtain the certificate of the court of the county where he resides, that it is contrary to his religious sentiments to bear arms. This provision would guard the rights of conscience both in war and in peace; and he knew of no reason why they should be less respected in time of war than in peace. He thought the matter had better be left where it was, but if it was the pleasure of the committee to reconsider the vote, he should offer this amendment.

Mr. BROWN, of Philadelphia, said the object of the gentleman was already understood; but as the motion was seconded by the gentleman from Chester, (Mr. Darlington) who was a member of the society of Friends, he should not oppose it. If the Friends declared that clause to be obnoxious to them, he certainly would agree to striking it out. He (Mr. B.) supposed that it was in accordance with the wishes of the society that the clause was stricken out, and it was at the request of some members of the society that the motion was made, and not from any disposition unfriendly to the militia system. It took away a distinction which was made at the time of the formation of the Constitution for the avowed purpose of relieving the Friends from burdens of conscience, but the measure had in practice proved to be odious and oppressive. It was, therefore, declared by some of the Friends, and, in fact, it was their general wish, as he had always understood, that, if this was the only means of relief which we could offer them, they would prefer to have no distinction whatever, made between them and other citizens. If such a clause as they require cannot be made a part of the Constitution, they prefer to be left to take their chance with others. But, when one of the members of the society, who is presumed to know their views and feelings on the subject, moves a reconsideration, he must suppose the clause was acceptable to these, and that they proposed to let it remain where it was. He was, therefore, willing that the motion to reconsider should prevail.

Mr. DARLINGTON said, the opportunity thus offered him to explain his object in seconding this motion was not unacceptable to him. He voted for the motion to strike out the clause, distinctly understanding, and hoping to get in the place of it, something more favourable to the wishes of the society of Friends. He wished to strike out the clause, because it imposed on the Friends an obligation to "pay an equivalent" for the service from which it exempted them. Against that obligation the society had complained, and in the hope of being relieved from it and from the obligation of bearing arms, he voted for the motion to strike out.

But, finding, as he now did, that what the Friends wished could not be obtained, he was in favor of restoring the clause to what it was before. If he could get nothing better for the society, he certainly did not wish to render their situation any worse.

Mr. SERGEANT, (President) rose merely to suggest, he said, whether the member from the county of Philadelphia, had not a sort of right to offer his amendment. He had actually presented it, and it was entitled to consideration, but it was withdrawn to allow a direct vote on the amendment offered by the gentleman from Chester.

Mr. DUNLOP would, he said, withdraw his motion if necessary, but he did not understand it to be so. He asked what the amendment referred to was.

Mr. MARTIN, in reply, said, it provided that no man should be constrained to bear arms or pay an equivalent therefor, except in times of war.

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

The Convention adjourned.

THURSDAY AFTERNOON, OCTOBER 26, 1838.

SIXTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. CHAMBERS in the chair, on the report of the committee to whom was referred the 6th article of the Constitution.

The question being on the motion of Mr. DUNLOP to reconsider the vote of the 21st, by which the amendment of Mr. BROWN, of the county of Philadelphia, was agreed to, Mr. DUNLOP withdrew the same.

Mr. MARTIN, of Philadelphia county, moved to amend the section, by inserting after the word "law," in the third line, the words, "no freeman shall be compelled to bear arms, nor pay an equivalent therefor, except in times of exigency or war."

Mr. MARTIN said, it would not be necessary to occupy the attention of the committee more than a very few minutes, as he thought the amendment must be fully understood. The question was now stripped of all those vexed matters which had occupied so much time. This consumption of time, however, was not to be regretted. The question was now reduced to this single point—if the freemen of this State shall be compelled at all times, to bear arms, and to be mustered into service whether they are wanted or not. It was a question, therefore, easily understood. He did not believe it possible that a majority of this committee,

or any thing like a majority of the citizens of the Commonwealth, would sanction the principle that the freemen of the State should, under all circumstances, be required to muster and bear arms, when there was no occasion for it. What was this Convention assembled for, but to make such amendments to the Constitution as circumstances seemed to require. An amendment of this kind, he knew, a short time ago, it would have been impracticable to carry out. But that time had passed over and passed away. On this hill, where we now sit to form a Constitution, the mechanic and the farmer, were compelled to pursue their daily occupation with their arms by their side. But would any one say that this was necessary now? No. He had come to the opinion, and who ever would take the trouble to examine the matter closely, would be convinced as well as he was, that the public opinion of this State was opposed to the adoption of any compulsory measure in reference to militia training. He did not himself wish, and he was mistaken if there were many of his friends who did wish it, that the matter should rest on any other ground than this—that no man shall be compelled to bear arms, or to pay an equivalent, except in time of war.

The merits and demerits of the militia had nothing at all to do with this question. Where would this effect the militia? No where. There was no necessity for bearing arms in a time of profound peace. No man could insist on such a point in a free government—in a Commonwealth situated like Pennsylvania, her extensive interior surrounded every way by hills. With such natural defences there is no danger of invasion. Besides this, the population of the State, from its earliest years, had been so habituated to the use of fire arms, that they were, at all times, almost qualfied for soldiers. If his proposition did not succeed, and the citizens and their sons are to be called out to give away a great portiou of their time, in arming and disciplining, whether necessary or not, it would be an opposition to the plain sense of public opinion. He did not think it required much argument or a great consumption of the time of the committee to settle this question, if we would but take the public opinion for our guide. His respectable colleague behind him, the Colonel of militia, said that those who heretofore resisted the militia law, are in rebellion against the laws of Pennsylvania. This, then, was a conclusive ground why there should be inserted in the Constitution an amendment which would prevent any such rebellion. He could scarcely believe that his colleague was right in his assertion, but yet there might be something in it. If this amendment was lost, and the Constitution were so framed, as to control the Legislature, and to make it imperative on that body to call out the freemen of the State for eight or ten days in the year, there would be found a great many who would not comply with the provisions of such a law—let his colleague call it rebellion, or by any other name he chose. Again: If there was any individual who had incurred considerable labor and expense to qualify his sons so as to make them masters of military tactics, would he be willing to see them in the ranks at the militia musters? If he had educated them at West Point, in order that they might obtain perfection in all the splendid accomplishments taught at that institution, would he be willing to let them go out with the militia, where there could be acquired no knowledge of war? Stripped now of all these logical and theological questions which had perplexed us so long, he hoped the question was now fairly presented, and that such an amend-

ment would be inserted in the Constitution as would hereafter prevent any such odious and oppressive tax from being forced on the freemen of this State. He trusted that his proposition would be supported by a handsome majority in the Convention, and he would conclude with asking the yeas and nays on his amendment.

The requisite number having seconded the call, the years and nays were ordered.

The question was then taken and decided in the negative, as follows, viz:

YEAS—Messrs. Baldwin, Barnitz, Biddle, Brown, of Lancaster, Carey, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clapp, Coates, Cochran, Crum, Darlington, Denny, Dickey, Farrelly, Forward, Hays, Hopkinson, Hyde, Jenks, Konigmacher, Long, Maclay, Martin, M'Cahen, M'Dowell, M'Sherry, Meredith, Merkel, Pennypacker, Porter, of Lancaster, Purviance, Reigart, Read, Riter, Royer, Russell, Serrill, Snively, Stevens, Thomas, Young, Sergeant, *President*—44.

NAYS—Messrs. Agnew, Banks, Barclay, Barndollar, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Chambers, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Craig, Crain, Crawford, Cunningham, Curll, Dickerson, Dillinger, Donagan, Donnell, Dunlop, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Houpt, Ingersoll, Keim, Kennedy, Kerr, Krebs, Lyons, Magee, Mann, M'Call, Montgomery, Myers, Nevin, Overfield, Pollock, Porter, of Northampton, Rogers, Saegar, Scheetz, Scott, Sellers, Seltzer, Shellito, Sill, Smith, Smyth, Sterigere, Stickel, Sturdevant, Taggart, Todd, Weaver, Weidman, White, Woodward—77.

Mr. DUNLOP, of Franklin, submitted the following motion, viz:

That the committee of the whole reconsider the vote of the 21st inst., on the amendment of the report of the committee to whom was referred the sixth article of the Constitution, to strike from the fourteenth section of said report, all after the word "law," in the third line, as follows, viz: "Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service."

Mr. INGERSOLL demanded the yeas and nays on this motion, and they were ordered.

Mr. PORTER, of Northampton, asked what would be the effect of the previous question? Would not the question be on the section as amended?

CHAIR. It would be.

Mr. PORTER then demanded the previous question, which was seconded by the requisite number.

Mr. DENNY appealed from this decision of the chair, on the ground that in his opinion the previous question ought to apply to the motion to reconsider, instead of the section to the Constitution.

After a short discussion by Messrs. BELL, PORTER, of Northampton, DICKEY, SERGEANT, DUNLOP, DARLINGTON, and HIESTER, Mr. DENNY withdrew his appeal.

Mr. MERRILL called for the yeas and nays on ordering the main question, which were ordered, and were, yeas, 60, nays 64; as follows:

YEAS—Messrs. Banks, Barclay, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clarke, of Indiana, Craig, Crain, Crawford, Curll, Darrah, Dickerson, Dillinger, Donagan, Donnell, Foulkrod, Fry, Fuller, Gamble, Gear-

hart, Gilmore, Grenell, Harris, Hastings, Hayhurst. Helffenstein, Hiester. High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Mann, M'Call, Merkel, Myers, Nevin, Overfield, Porter, of Northampton, Read. Rogers. Scheetz, Sellers, Seltzer, Shellito, Smith, Smyth, Sterigere, Stickel, Taggart, Weaver, White, Woodward—60.

Nays—Messrs. Agnew, Baldwin, Barndollar, Barnitz, Bell. Biddle. Brown, of Lancaster, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger. Cline, Coates, Cochran, Cope, Crum, Cunningham, Darlington, Denny, Dickey. Dunlop, Farrelly, Forward, Hays. Henderson, of Allegheny. Henderson, of Dauphin, Hopkinson, Jenks. Kerr. Konigmacher, Long, Maclay, Martin, M'Cahen, M'Dowell. M'Sherry, Meredith, Merrill, Montgomery, Pennypacker, Pollock. Porter, of Lancaster. Purviance, Reigart. Riter, Royer, Russell, Saeger, Scott, Serrill, Sill, Snively, Stevens, Sturdevant, Thomas, Todd, Weidman, Young, Sergeant, *President*—64.

So the committee refused to order the main question to be put.

Mr. Dunlop renewed the motion of reconsideration.

Mr. Ingersoll demanded the yeas and nays on the motion to reconsider; which were ordered.

Mr. Brown, of Philadelphia county, rose and said, that he believed he had given his reasons for the motion he had made, when he last addressed the committee on this subject. He did not feel very anxious that this principle should either be inserted in the Constitution of the State, or that it should be excluded from it. At the time he submitted the motion, he had done it with a view to the benefit of those at whose instance it was made. If they were not desirious to retain it, he should not be inclined to feel any anxiety about it. He did not intend to rise up as the champion to defend the motion he then made, and which, it would be remembered, had met with such general approbation on the part of the members of the Convention. He was of opinion, however, that as thus much had been asked, and as some gentlemen, members of this body, were still inclined to the belief that they were in a better position with that portion stricken out, while others thought they were in a worse position, it would be better to let the matter lie over until second reading. The best the committee could do, would be, he thought, to let the matter rest until it should again come up in due course, on its second reading. It could then be retained, or left out, as the Convention might think most expedient. If the society of Friends were not desirous that such a provision should be inserted, he did not think that any gentleman in this body should insist on retaining it. If there was any class of our citizens who wished to be relieved from particular burdens, the justice of their claim could be as well decided upon on second reading as at this time. If that relief could be granted to one portion of the community without committing injustice toward another, he was willing it should be given. But to grant a species of relief which might be abused, was an act to which this Convention should never yield its sanction. Nor did he believe that it would. This, however, was not the last question on which the Convention would be called upon to act; and there was yet abundant time for deliberation and reflection. All he asked was, that the committee would examine the subject carefully in all its bearings—that they would consider it well, and that they might thus be prepared to say what steps it might be necessary and proper for them to take. He trusted that they would not hastily undo that which the committee, by so very large a vote, had thought proper to do on a previous occasion.

Mr. STEVENS said, he trusted that the excitement which had been exhibited in the process of this contest would not induce any gentleman to suffer his personal feelings to get the better of his judgment, but that he would act coolly and deliberately on this very serious question. He hoped that the motion to reconsider would prevail. It must be obvious to every reflecting mind that the exclusion of this clause from the amended Constitution would be, in effect, to take away from those who held the scruples of conscience every vestige of toleration; and that it was saying to them, these conscientious scruples, to which a due respect has hitherto been paid by your government, are no longer worthy of legal forbearance.

If this vote was reconsidered, he would suggest whether it would not be practicable to draw up an amendment in some form or other, which might meet the views of all the members of the Convention, and which, at the same time, might liberate this class of men from any thing like bonds or trammels on their conscience. Suppose, for example, that the imperative words "shall pay" were to be stricken out, and that the words "may be made to pay" were inserted in lieu of them; thus leaving it not imperative, but discretionary, with the Legislature, from year to year, to say whether the state of the times, or the condition of the country required that this class of men should have their scruples disregarded, and their feelings crushed by the weight of State Legislation. If the vote to re-consider should be agreed to, as he trusted it would, he should then move an amendment of the character which he had designated. Such an amendment would make the Constitution of our State much more in unison with the spirit of the age, than did either the Constitution of 1790, or the amended Constitution as it now stood under the vote which had been taken.

Mr. BELL said that, for the reasons which had been assigned by the gentleman from Adams, (Mr. Stevens,) he should vote in favour of the motion to reconsider. It had been most truly remarked that, when we looked to the provisions of the present Constitution in relation to those conscientious scruples which were known to be entertained by a large and highly respectable portion of the citizens of Pennsylvania; and when we saw the solemn enactment declaring that those scruples were, at least to some extent, to be respected; and when we looked to this new Constitution now about to be promulgated to the people, and found that a Convention composed of the representatives of freemen had, after solemn consideration, struck out, absolutely expunged, that portion of the Constitution of 1790 which shielded and protected the consciences of these men;—he said, when all these things were taken into view, those who might come after us could arrive at no other conclusion than that, at this period of the world, after the onward march which man had for several ages back, taken towards civil, political and religious freedom, the representatives of the freemen of Pennsylvania, in Convention assembled, had deliberately expressed their opinion, that this protection, this toleration towards the rights of conscience, ought hereafter to be withdrawn. No other inference could be deduced, if the provision was left in its present shape. But there was another reason why he was decidedly in favor of the motion to reconsider. He had intended so soon as the motion to reconsider prevailed—if it fortunately should prevail, and the

clause which had been stricken out should be re-instated—to move, by way of an amendment, to add, after the words "personal service," the words, "when required to do so by law," or words to that effect; thus leaving it discretionary with the Legislature to say, in the wisdom and in the capacity of representatives of the people, when this class of our citizens who entertained these conscientious scruples, should or should not be compelled to pay an equivalent for personal service. He would not make it imperative on the Legislature at all times to exact an equivalent, but he would vest in the Legislature the right to say when they should be called upon to pay an equivalent and when they should not. The whole matter would thus be left open; and this, he thought, would be the best mode in which it could be arranged. He did not now intend to enter on the intricate question of the rights of conscience, nor to inquire how far it was the duty of the government, consistently with the obligations which it owed to the other portions of our people, to go, in extending protection towards them. He would only now say, that he felt anxious that the vote which had been taken should be reconsidered.

And the question was then taken on the motion to reconsider the vote of the 21st instant, and was decided in the affirmative as follows:

YEAS—Messrs. Agnew, Baldwin, Barclay, Barndollar, Barnitz, Bell, Biddle, Bonham, Brown, of Lancaster, Brown, of Northampton, Butler, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Coates, Cochran, Cope, Crain, Cunningham, Darlington, Darrah, Denny, Dickey, Dillinger, Donagan, Donnell, Dunlop, Farrelly, Forward, Foulkrod, Fry, Gamble, Gearhart, Grenell, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Jenks, Kerr, Konigmacher, Long, Lyons, Maclay, Mann, Martin, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Rogers, Royer, Russell, Saeger, Scott, Sellers, Seltzer, Serrill, Sill, Smith, Snively, Stevens, Sturdevant, Thomas, Weaver, Weidman, White, Woodward, Young, Sergeant, *President*—87.

NAYS—Messrs. Banks, Bedford, Bigelow, Brown, of Philadelphia, Clarke, of Indiana, Craig, Crawford, Crum, Curll, Dickenson, Fuller, Gilmore, Harris, Hastings, Helffenstein, Houpt, Hyde, Ingersoll, Keim, Kennedy, Krebs, Magee, M'Cahen, M'Call, Myers, Nevin, Overfield, Porter, of Northampton, Read, Riter, Scheetz, Shellito, Smyth, Sterigere, Stickel, Taggart,—36.

So the vote was reconsidered.

So the question was determined in the affirmative.

Mr. INGERSOLL then offered the amendment of which he gave notice this morning.

The Chair stated that it was not now in order. The question was, he said, now, upon the amendment of the gentleman from the county of Philadelphia, (Mr. Brown) which had been reconsidered, viz: to strike out from the 14th section of the report of the committee, on the 6th article of the Constitution, the following: "Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service."

Mr. FORWARD asked what was the amendment which the gentlemen from the county, Mr. Ingersoll, proposed to offer.

The amendment was read as follows: "The freemen of this Commonwealth shall be armed, trained, and prepared for defence, as by law shall be directed, except those who are regular members of some

society whose religious belief is opposed to bearing arms; and a certificate to the fact shall be filed; and, the author thereof punished for a misdemeanor for falsehoods therein."

Mr. BROWN, of Philadelphia, modified his amendment, by striking out all after the word "pay," and inserting, "a tax into the treasury of the State, equal to the personal service rendered by those who bear arms."

Mr. DUNLOP asked by what means the value of a man's personal services was to be recovered in money.

Mr. BROWN further modified the amendment, and then withdrew it for the present.

Mr. BELL, of Chester, moved the following amendment—to strike out all after the word "but" and insert in lieu thereof the words "may be required by law to pay an equivalent therefor."

Mr. RUSSELL, of Bedford, moved to amend the amendment, by striking out all after the word "law," in the third line, and inserting in lieu thereof, the following, viz: "But no freeman of this State, shall be compelled to bear arms, provided he will pay an equivalent to be ascertained by law."

Mr. RUSSELL said he took this from the Constitution of the State of Tennessee. It would get rid of many objections and apply to all alike.

Mr. HEISTER could not but congratulate the committee the other day, he said, on having settled this important question. But, after debating the matter for another week, they had now got back to the very point whence they departed. He hoped the committee would now stick to the question without being again drawn off from it by any amendment. Weighty considerations urged us to act upon the question now before us. It seemed to be demanded by the general voice of the people, that the militia trainings should be abolished, as useless, expensive and demoralizing; or, at least, to leave it to the Legislature to continue them, or to dispense with, according to the exigencies of the times and the demands of public sentiment. He hoped the committee would now go on and do this, as had been proposed by the report of the committee. The report in its present form would answer every object, and would meet with the views of the majority of the people, as he felt well assured.

Mr. BIDDLE had been in favor, he said, of exempting those whose conscience rendered them unable to perform military duty, and he still believed that there was a disposition to take that course The amendment heretofore offered by the gentleman from Chester, (Mr. Darlington) would, he hoped, be tried over again and adopted. It was a provision which would oppress no one, and which, he thought, would conciliate all.

The question was then taken on Mr. RUSSELL's amendment to the amendment and decided in the negative.

Mr. SERGEANT, (President,) said, as the amendmant stood, it would be imperative on the legislature to compel the payment of an equivalent. He now understood it to be the object to take away every imperative character from the provision, and he would, therefore,

suggest the words following, viz: "but, when required by law, they shall pay an equivalent for personal service."

Mr. BELL said that, upon looking at the whole amendment, he could see no ambiguity in it.

Mr. SERGEANT said he would suggest another modification, which was merely of a verbal character. The imperative character of the provision could be moved by putting it in the form following: "Those who conscientiously scruple to bear arms, shall not be compelled to do so, but may be required to pay an equivalent therefor."

Mr. BELL accepted this amendment as a modification of his proposition.

Mr. DUNLOP moved that the committee now rise;—Lost.

Mr. DUNLOP hoped, he said, that the committee would not adopt the proposition as modified. He greatly preferred the original proposition, as more intelligible, and in fewer words. The original proposition he preferred for another reasan,—that it retained the language of the old Constitution, and was well understood.

Mr. BELL said there was little difference between the two propositions. That which he had adopted would, he believed, answer the object contemplated.

Mr. DUNLOP again moved that the committee rise, not wishing the question, he said, to be taken hastily. The motion was lost—yeas 43, nays 62.

Mr. BELL hoped, he said, that the committee would indulge him with a few words of explanation, as it seemed to him there was a great misapprehension as to the difference between what we had been doing under the present Constitution, and what it was now proposed to do, by the amendment before the committee. The motion to strike out the clause respecting those who have conscientious scruples as to bearing arms, having been reconsidered, he proposed to add the provision, that those who conscientiously scruple to b ar arms, shall not be required to pay an equivalent for personal service, unless the requisition be made by law. The amendment leaves it to the option of the Legislature, to require an equivalent or not. It is agreed by all that they shall not bear arms against their consciences, and the question is, whether the Constitution shall impose upon them the payment of an equivalent, or whether that shall be left to the discretion of the legislature. The present Constitution makes it imperative upon them to pay an equivalent, for personal service. It leaves no discretion to the Legislature on the subject. The very words of the Constitution are, that those not compelled to bear arms, on account of conscientious scruples, "shall pay an equivalent for personal service." Should they refuse, or neglect to perform the service, they shall pay an equivalent. The question now is, shall we not alter the Constitution so as to leave it to the immediate representatives of the people to say whether they shall be obliged to pay this equivalent or not. Shall it be left to the Legislature to say when, and under what circumstances, they shall pay an equivalent? If the legislature then should deem it unwise, cruel, and unjust, to direct the payment of this equivalent they will not do it. The amendment leaves the question to be settled by the ordinary Legislature, whenever the case may arise. The clause will provide,

first; that those conscientiously scrupulous shall not be compelled to bear arms; and, second, that the Legislature shall say whether, and when, they shall pay an equivalent therefor. The objection to a former proposition was that it placed the society of Friends above and beyond the law, constituting them a privileged class; but that objection did not apply to this amendment. That we should extend protection to their scruples, where it can be done with propriety and safety, was the opinion of all, but there were doubts as to the policy of exempting them, under all circumstances, from the payment of an equivalent for personal military service. But what objection will there be to vesting in the Legislature discretionary power over the subject. In every great public emergency when the services of these people are required, they can then be called upon to pay an equivalent;—and thus to contribute out of their overflowing abundance to sustain the interests of the community, whereof they form a part. It was admitted that it is improper to exonerate them altogether, both from the service and its equivalent, but what better course in regard to them could be taken than to leave it to the immediate representatives of the people, to determine when that state of things has arisen which will make it necessary for every one who lives under the protection of the Commonwealth, to contribute towards its support and defence. On one hand, it is acknowledged that there is a class of our fellow citizens, who entertain these scruples, religiously and conscientiously; and, on the other hand, we admit that they ought, under some circumstances, to pay an equivalent for their exemption; and we propose to leave it to the ordinary Legislature of the Commonwealth, to say when it shall be proper and necessary to require from them that equivalent.

Mr. Fuller, of Fayette, said he had hoped that the question was near its decision, but he fouud he was mistaken. The very question which had been once disposed of, was again brought forward. The gentleman from Chester dwelt on the discretion which should be vested in the Legislature, and was willing to leave all to the Legislature. He (Mr. F.) was willing to leave a portion with that body. The report of the committee says:—"The freemen of this Commonwealth shall be armed, organized and disciplined, when, and in such manner as the Legislature may hereafter by law direct." It was, therefore, left discretionary with the Legislature to say *when* the organization should take place, and this was just what the gentleman from Chester wanted. Why at this late hour, when the question had been already settled, more time was to be consumed on it, he could not tell.

Mr. Woodward said he believed the committee were disposed to take the original Constitution, in preference to the report, and to test this he demanded the previous question.

A sufficient number rose to second the demand.

The question being, "Shall the main question be now put?"

Mr. Biddle called the yeas and nays, and they were ordered.

The question was then put and decided in the affirmative, as follows:

Yeas.—Messrs. Banks, Barclay, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Craig, Crain, Crawford Crum, Curll, Darrah, Dickerson, Dillinger, Donagan, Donnell, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore,

Grenell, Harris, Hastings, Hayhurst, Helffenstein, Hiester, High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Kerr, Krebs, Lyons, Magee, Mann, M'Cahen, M'Call, Montgomery, Myers, Overfield, Porter, of Northampton, Rogers, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, Smyth, Sterigere, Stickel, Sturdevant, Taggart, White, Woodward—66.

NAYS—Messrs. Agnew, Baldwin, Barnitz, Bell, Biddle, Brown, of Lancaster, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Cline, Coates, Cochran, Cope, Cunningham, Darlington, Denny, Dickey, Dunlop, Forward, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Jenks, Konigmacher, Long, Maclay, Martin, M'Dowell, M'Sherry, Meredith, Merkel, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Read, Royer, Russell, Scott, Serrill, Sill, Snively, Stevens, Thomas, Todd, Weidman, Young, Sergeant, *President*—51.

Mr. CLARKE, of Indiana, said that as he was anxious to record his vote against all innovation on that matchless instrument—the present Constitution of the State of Pennsylvania—he would ask the committee to indulge him with the yeas and nays on this question, and they were ordered.

Mr. C. then inquired of the chair whether, if the committee of the whole disagreed to the report of the committee, the effect would be to leave the Constitution as it now stood?

The CHAIR said, that such would, in his opinion, be the effect.

Mr. BELL inquired whether, if the amended report of the committee was negatived, it would be in order to submit an amendment to the Constitution as it existed at this time?

The CHAIR said, that as the effect of such a vote would be to leave the Constitution of 1790, in its present form, it was the impression of the chair that it would be in order to move an amendment to that Constitution.

And the main question, which was: "Will the committee of the whole agree to so much of the report of the committee as is called section fourteenth, as amended?" was then taken, and decided in the affirmative, as follows:—

YEAS—Messrs. Agnew, Baldwin, Barndollar, Barnitz, Bell Biddle, Brown, of Lancaster, Carey, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Coates, Cochran, Craig, Crain, Crum, Cunningham, Darlington, Denny, Dickey, Donnell, Dunlop, Forward, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Jenks, Kerr, Konigmacher, Long, Maclay, Martin, M'Call, M'Dowell, M'Sherry, Meredith, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Read, Royer, Russell, Saeger, Scott, Serrill, Sill, Snively, Thomas, Todd, Young, Sergeant, *President*—60.

NAYS—Messrs. Banks, Barclay, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clarke, of Indiana, Cleavenger, Crawford, Curll, Darrah, Dickerson, Dillinger, Donagan, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Mann, M'Cahen, Myers, Overfield, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, Smyth, Sterigere, Stevens, Stickel, Sturdevant, Taggart, Weidman, White, Woodward—55.

So the committee of the whole agreed to so much of the report of the committee as is called section fourteenth, as amended.

On motion of Mr. M'DOWELL, the committee then rose, reported progress, and obtained leave to sit again; and,

The Convention adjourned.

FRIDAY, October 27, 1837.

Mr. Dunlop submitted the following resolution, viz:

Resolved, That as soon as the fifteenth section of the report, No. 15, which is the order of to-day, is passed through the committee of the whole, that all further proceedings towards amendments of the Constitution shall cease, and that the Convention will proceed to consider, upon second reading, those which shall have been then acted on in committee, so that a speedy adjournment of this body may be effected.

Mr. Dunlop moved that the resolution be now read a second time.

Mr. Read, of Susquehanna, asked for the yeas and nays which were ordered.

The question was then taken, and decided in the negative, as follows:

Yeas—Messrs. Baldwin, Barndollar, Brown, of Lancaster, Chambers, Chandler, of Chester, Cochran, Craig, Cunningham, Darlington, Denny, Dickey, Dillinger, Dunlop, Hays, Hopkinson, Ingersoll, Konigmacher, Lyons, Maclay, M'Call, M'Sherry, Merrill, Pennypacker, Porter, of Lancaster, Royer, Saeger, Scott, Serrill, Snively, Stevens, Todd, Young, Sergeant, *President*—33.

Nays—Messrs. Agnew, Ayres, Banks, Barclay, Barnitz, Bedford, Bell, Biddle, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Cope, Crain, Crawford, Crum, Curll, Darrah, Dickinson, Donagan, Donnell, Farrelly, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Heister, High, Houpt, Hyde, Jenks, Keim, Kennedy, Kerr, Krebs, Magee, Mann, Martin, M'Cahen, M'Dowell, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Pollock, Porter, of Northampton, Purviance, Read, Riter, Rogers, Russell, Scheetz, Sellers, Seltzer, Shellito, Sill, Smith, Smyth, Sterigere, Sturdevant, Taggart, Thomas, White, Woodward—86.

SIXTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. Chambers in the chair, on the report of the committee, to whom was referred the sixth article of the Constitution.

So much of the said report as is called section fifteenth, being under consideration, in the words following, viz:

"Sect. 15. No person who shall hereafter be engaged in a duel, either as principal or second, shall hold any office of honor, trust or profit under the Constitution and laws of this Commonwealth, and the Legislature shall direct by law in what manner the proof of having been so engaged shall be established."

Mr. Hiester, of Lancaster, moved to amend the same by striking therefrom all after "section 15," and inserting in lieu thereof as follows, viz:

"Any person who shall, after the adoption of the amendments proposed by this Convention to the Constitution, fight a duel or send a challenge for that purpose, or be aider or abetter in fighting a duel, shall be deprived of the right of holding any office of honor or profit in this State, and

shall be punished otherwise in such manner as is or may be prescribed by law."

Mr. HIESTER asked for the yeas and nays on the question, and they were ordered.

Mr. PORTER, of Northampton, moved to amend the amendment by strking out all after "section 15," and inserting as follows, viz:

"The barbarous practice of duelling shall be prohibited by proper legislative enactment, and the due punishment of all offending, shall be disfranchisement, legal disqualification to hold office, or otherwise"

Mr. PORTER said he was opposed to the whole provision, which he considered as unnecessary, but, if any thing was considered necessary, it should be something like the amendment he had now offered. He had no idea of turning the Constitution into a penal code. The law of the land provided adequate punishment, and all good citizens would aid in its infliction. But if it was the will of the majority that there should be constitutional provision, the details ought to be left to the Legislature. The Constitution should not be converted into a penal code. Certain principles should be laid down in the Constitution, on which the Legislature might found its action; grants of power might be made to the judicial branch, but we ought not to go so far into details as to determine what the punishment should be. He had yet another objection. He could not see why in the Constitution we should brand one sin in particular as unpardonable. He knew duelling was a great offence. But there were many of our most respectable citizens who, in early life, had been engaged in duels, and had repented of the folly in after life. Should there be no *locus penitentiæ* for this offence, above all others which might be committed? This would be in contradiction to the mild principles of christianity.

Mr. HIESTER stated that this provision was not without a precedent. It was a copy of a section in the Constitution of the State of Tennessee. In the Constitution of Virginia there was also a similar provision, recognizing the passage of a law for the punishment of duelling. [Mr. H. here read the provision from the Virginia Constitution.] It appears, therefore, that in the Constitution of Tennessee there was a provision to prevent duelling, and in the Virginia Constitution, the deprivation of holding office for fighting a duel, was recognized. There was this difference between a penal enactment and a constitutional provision. Under the law, the penalty might be evaded by the offender going into another State, where the law could not follow him with its punishment. But, under a constitutional provision, he would be amenable to the punishment any where. He could not permit himself to doubt, in the age in which we live, that every one would admit that the practice should be discountenanced.

Many disputes and differences of this kind arose from political cavils, among political aspirants, whose eyes were directed to power and station. If we insert this provision, declaring that offenders in this way shall hold no office, few such men will be found to engage in duels. He believed, therefore, that it would be salutary and proper to introduce this provision. When the provision should become known, there would not be found many willing to incur the penalty. In the Southern States,

things are somewhat different. Gentlemen in that section of our country, think it necessary to have such collisions. But when we read of such scenes as have recently occurred, and are daily occurring in Louisiana and Mississippi, it becomes an especial duty to prevent, by all the means in our power, the occurrence of such tragic scenes here.

Mr. STURDEVANT, of Luzerne, was of the opinion that the Constitution should contain some provision on the subject, and he preferred something like that contained in the report of the committee. It appeared to him to be a more proper subject for the Constitution, than for legislative action. We have had legislative enactments, but they did not seem to answer the purpose. The Legislature had imposed a fine of five hundred dollars, and one year's imprisonment, the same as in cases of felony, but the penalty was not effective in checking the evil. He was therefore in favor of doing away this legal provision, and inserting a clause in the Constitution. The effect of such a provision would be more operative. He felt inclined to believe that any one who had been challenged, being able to hold up the Constitution as a bar to his acceptance, would be able to relieve himself from the imputation of cowardice. The remedy ought not to be provided by the Legislature. The offender ought to be punished by the deprivation of his citizenship. This would be much more likely to put an end to the practice than any act of the Legislature. It was easy for an individual, convicted under the act of the Legislature, to obtain a reprieve from the Governor, and to come back into society, on the same footing as he had previously occupied. This has been the case, and may be the case again. But if there was a constitutional provision, it would do away, in a great degree, not only the necessity of accepting a challenge, but also, with the practice of sending one. Those who wish to banish this barbarous practice out of the country, had better rely on the Constitution, than any legislative remedy. Let there be inserted in the Constitution, something, which the Legislature cannot overrule, such as taking away the right of citizenship for ever. Every one who might then be challenged, would have sufficient ground for refusing, by referring to the Constitution, and saying here is the Constitution which deprives an offender in this way, by depriving him for ever of his citizenship; and were it not for this, I would accept the challenge and resent the insult, but I cannot violate the Constitution, which, perhaps, I have sworn, under all circumstances, to preserve. There could be no hope of reprieve or pardon, in case of acceptance. The offender must thenceforth become an outcast. This would be a sufficient reason to justify the refusal of a challenge, and the constitutional interdict would be sufficient to shield him who refused, from any imputation of cowardice. For these reasons, therefore, he was disposed to think that there ought to be this provision in the Constitution.

Mr. AGNEW, of Beaver, rose, not, as he said, to make any speech on the subject, but merely to call the attention of gentlemen to the act of the Legislature, which they appeared not to have read. He would call the attention of the committee to the provisions of the act already in force on this subject, from which he would read the first two sections. The act was passed in 1806, and the provisions were as follows:

"SECT. 1. If any person within this Commonwealth, shall challenge,

by word or writing, the person of another, to fight at sword, rapier, pistol, or other deadly weapon, or if any person, so challenged, shall accept the said challenge, in either case, such person so giving, or sending, or receiving any such challenge, shall for such offence, being thereof lawfully convicted in any court of record, within this Commonwealth, by the testimony of one or more witnesses, or by confession, forfeit and pay the sum of five hundred dollars, and shall suffer one years's imprisonment at hard labor, in the same manner as convicted felons are now punished, and moreover shall forfeit, and be deprived of all rights of citizenship, within this Commonwealth, for the term of seven years."

"SECT. 2. If any person shall willingly and knowingly carry and deliver any written challenge, or shall verbally deliver any message, purporting to be a challenge, or shall consent to be a second in any such intended duel, and shall be there legally convicted as aforesaid, he or they so offending shall, for every such offence, forfeit and pay the sum of five hundred dollars, and suffer one year's imprisonmeut at hard labor, in the same manner as convicted felons are now punished, and moreover, shall forever thereafter be rendered incapable of holding any office of honor, trust or profit, within this Commonwealth, which incapacity shall be declared and made part of the judgment of the court."

Now then, in fact, it appears that duels are already discredited in Pennsylvania; and it was a sufficient argument that the law discredits the practice. When the law went thus far, and had been in operation for years, there was no fear that it would be changed. Did the amendment now prepared go as far, or half as far as the existing law? As the gentleman from Northampton had properly said, the adoption of this clause would make the Constitution a penal code, and this too, at a time when public opinion would not be likely to sanction the change. Should the public sentiment be ever likely to change on this subject, under the provision for future amendments to the Constitution, it would be easy, at any time to insert a provision. But why trouble the people with deciding on questions of this nature, when the law already provides more than we ask?

Mr. SMYTH, of Centre, differed from the gentleman who had just spoken, and he would just state the reason why he differed. He thought it necessary to have a provision on the subject in the fundamental law. Last evening, he himself had advocated an amendment looking to preparation, in peace, for war. But he thought that a provision like this should also prevail. The gentleman from Beaver had read the provision of the existing law. Suppose that a citizen of Pennsylvania was in Louisiana, and should meet a ruffian who offered him a challenge, and had not the law of Pennsylvania at hand for reference. He would then be unable to justify a refusal to accept the challenge. But he may have the Constitution at hand, which he could refer to as a sufficient reason for refusing a challenge. Not having the law at hand, he might render himself liable to be assailed as a coward, because he was asked to refer to the law, and was unable to produce it. On this account, then, he considered that it would be better to insert a clause in the Constitution.

Mr. STEVENS, of Adams, said he was opposed to the amendment to the amendment, and in favor of the amendment of the gentleman from Lancaster. The amendment to the amendment he regarded as little better

than a mere mockery. To place in the Constitution the same provision as before, giving no additional power, was like attempting to get rid of a subject without touching it. There could be no necessity for such a provision as that of the gentleman from Northampton to prevent one species of offence. Had the laws hitherto had any effect, or any adaptation to the case? They had never had any effect on public opinion, or been at all successful in restraining this crime. Who had ever been indicted or convicted under these laws? No one. No one had ever been punished to the slightest extent, and no one ever would be, under them. The gentleman from Beaver said the penalty of the law was sufficient. The action of public opinion prevents for ever the operation of the act. If we introduce a provision into the Constitution, whenever any one who has offended against it, is elected to the Legislature, it would be in the power of any one to contest his seat, and if contested, and the offence proved, he would be excluded from his seat. But under an act of Assembly, he must be regularly convicted in a court of justice before the penalty of the law can be enforced against him. This would never be done. Who is it that fights duels? Not the class who are usually the subjects of prosecution. It is the high, the rich, the gallant, and they can only be prosecuted by those who lose their friends. But these are carried away by a sense of chivalry, and it is as much disgrace to prosecute, as it would be to refuse a challenge. There ought then to be a constitutional provision on the subject. There was another reason. By law, you cannot convict unless the offence was committed in Pennsylvania. The jurisdiction does not lie beyond the limits of the State, and the act so provides. But a constitutional provision would reach any one concerned, no matter where he may be. How often is the act evaded? No one fights a duel in Pennsylvania. He had known many in the last twenty years, who had gone out beyond the limits of the State, and although not fatally involved, had yet been concerned in duels, and had made their arrangements beyond the line. The law could have no effect in cases like these. But these persons who hold such a high sense of honor he did not ridicule or condemn, although he held not in great estimation one class of them, who were aspiring after political honors. These cannot, under the law, be convicted, but they will be careful how they commit any act which will exclude themselves from the chance of rising to the honor and emoluments of office. He knew nothing that could be so potent in preventing these men from engaging in duels, as a provision in the Constitution. To threaten such with the penalty of the law was in effect nothing. They knew it to be a mere threat in the statute book, which never had been carried into effect, and which never would be carried into effect. And there always would be a great number of applicants for office, engaged in party politics, who would be, at all times, ready to take advantage of the weakness of the law, and who could only be restrained by a power which was above that of legislative enactment.

There then was a plain, easy, and powerful remedy which was certain to be resorted to, and nothing more than this need be done. Nothing need be said about the enormity of this offence, for all admitted it. As to the *locus penitentiæ*, it was unnecessary to say any thing, because murder in the first degree was always punished in this state by death, and probably always would be; and killing a man in a duel was the last kind of murder

for which penitence ought to go for pardon. This crime was always committed in cold blood, and it never had the excuse of human infirmity. It was cool, premeditated, deliberate. Any excitement of feeling would unfit a man, according to the principles of honor which govern these affairs, from participating in them. We would not, in such a case, extend any room for penitence, unless it be that penitence which is exhibited in the other world.

Mr. Banks was very willing, he said to join in removing any obstacle to proper legislation on this snbject. The Legislature had attempted to enact official laws in relation to it. While the Legislature was left to enact such laws as they pleased in relation to duels fought, either in the state or out of it, he saw no reason for submitting to the people a provision on this subject. Every man who reflects upon the source of life, and upon the nature of man, would be disposed to act cautiously in this matter. It was our duty, in the position in which we were placed, to exhibit our regard for public morals and social order, and manifest to the world a desire for peace and public tranquility. It therefore becomes us to conduct ourselves carefully in every thing and especially in this. We have no license in law or in public opinion, or in the feelings of humun nature, for duelling. But sometimes the necessity of the case has driven honorable and worthy men into it. While the Legislature was free to act and pass such laws as might be necessary for the suppression of the practice, it was as unnecessary for us to interfere by a Constitutional provision, in relation to this, as to any other crime. Why should this be provided for more than murder or manslaughter? There would be no necessity for it, and that being the case, he thought it had better not be done. It might be that a majority of the people of the state, being friends to morality and order, would agree to incorporate this provision in the Constitution. If any man were indulging in envy of his neighbor, on account of his more successful effort in securing the popular favor, how easy it would be to provoke him, by personal insult, to such a course as would prevent him from taking his seat. Unless you reform the morals and manners of the people, you cannot prevent one citizen from offending another. If a man was determined to give offence, he would do so. Good men would never drive their neighbors either to duelling or to assault and battery. There was no real necessity for incorporating this provision in the Constitution, or from imposing any disabilities, in relation to this, which was universally admitted to be a shocking practice, which was not also imposed upon other crimes. He would not shut out from the operation of the pardoning power, men who were involved in this offence, while we pardoned, and perhaps raised to high places in society and in the government, men who who have been guilty of provoking another to a duel by spitting in his face, or other deliberate insult, and men who have been guiliy of other crimes. When murderers were not deprived of the hope of pardon he would not cut off the duellist from it. The best mode would be, he thought, to leave all men to be treated according to law, and the circumstances of the case, and the sense of those upon whom may rest the responsibility of their trial.

Mr. Forward said he was of the opinion, and there were Constitutional lawyers here who would correct him if he was wrong, that the Legislature had no right to enact a law prohibiting any man from holding

an office or from exercising the right of suffrage, for any act of this kind. This was the office of the Constitution. The Legislature would impose no new restrictions, nor enlarge any old ones, upon the exercise of the rights of citizenship. He submitted it to the Constitutional lawyers here to say whether the principle which he had here stated was correct. He denied that the Legislature could impose any restrictions upon the right of holding office or voting. He believed it had been so decided in the Legislature of Virginia, and the Constitution of New-York specially authorized the Legislature to enact laws for the disfranchisement of persons guilty of certain offences. The same principle was recognized in the Constitution of Tennessee. Whether he was correct or not in his opinion, it was enough for him that the Legislature would feel great delicacy, as they ought to do, in restricting those rights, upon any occasion or for any purpose. If we really wished to suppress the practice, we must not leave it to an act of Assembly, and to the result of a legal process for conviction. The Legislature, he thought, could not interfere; and if they did, a law could not meet the case of a duel fought out of the limits of the state. It was necessary that we should make a Constitutional provision on the subject.

Mr. Brown, of the county of Philadelphia, did not, he said, defend the practice of duelling. Such a course would only bring obloquy and contempt on any one who would attempt it. Any argument on the subject would be lost upon those who had never been placed in circumstances which would enable them to judge of the motives and feelings of him who had been called upon to defend his person at the sacrifice of life. It must be left for that bosom alone which is exposed to the hazard of the act, to appreciate the feelings which prompted it. All your laws can have no influence on the course of any man in such a case. How would the prospect of losing the chance of holding an office under the State government, or a commission in the militia, stop a man from an act on which he is about to peril his life, his reputation, and his hopes, as has been said, of happiness hereafter. With all these things in view, who would think of the clause in the Constitution? He who supposed that it would have any influence, knew little of the human heart, or of the feelings of that man who was placed in such circumstances. Farther he would say, that however averse he might be to the practice of duelling, that the principle of personal responsibility had been the means of preventing much crime. It had preserved, through life, unstained, many a matrimonial bed, and the chastity of many an innocent woman. The knowledge of the responsibility which might be incurred to the father or the brother, had a strong influence in deterring many from crimes which otherwise they might commit with impunity. This provision had been resorted to in other States, and had always been found useless and vain as a means of preventing duelling. Why, then, should it be placed in the Constitution? This provision we find in the Constitutions of Virginia, Tennessee, and other States; but had it checked duelling there? Shall we be told that any restriction is necessary in Pennsylvania, where duels are so rare, when such restrictions have been found useless in the States where the practice prevails? Here public opinion has settled the matter; but, if public opinion tolerated duelling, would any constitutional or legal enactments pevent it? Suppose persons prohibited from fighting in this State, how easy it would be for them to

go beyond its limits. They could pass over the boundary, and put your laws at defiance.

There was another and very important consideration; and that was the effect which this restriction would have upon the individual subjected to it. When he found himself deprived of his privileges, and set up as a mark for the finger of scorn, shunned and denounced as one unworthy of participation in the rights of citzienship, how could he live among you as a good citizen? Would he not be rendered misanthropic and desperate? Would he not hold blood as cheap as the waters of yonder stream? The provision now proposed was impracticable. It supposed that we should punish a citizen for deeds committed beyond the limits of the Commonwealth; that we should send out spies along with every citizen to follow him in his wanderings over the earth, and watch his actions where ever he may be; and with a view to hold him accountable for them. We say to him that wherever he lives, and under whatever circumstances he may find himself, he shall not be governed by the usages of the place where he is, nor by his own judgment, deliberately made up, in reference to his situation, but by this abstract and arbitrary restriction.

It was said that the state of political parties in the Legislature would always render it certain that every one would be challenged for his disability under the proposed clause. But who would ever put such interrogatories? Who was ever asked, upon taking his seat in either branch of the Legislature, whether he was of legal age? Suppose the individual objected to, denies the charge, how is it to be proved? Will you send a commissioner to New Orleans or the East Indies, to inquire into the facts? But why should not other offences be punished by disfranchisement, as well as this? Gaming was prohibited by the statutes; but, according to the newspapers which had been laid on our tables, it is carried on to a most abominable and pernicious extent in this very borough. Should we undertake to eradicate it, or leave it to the laws? He would venture to declare the belief, that gaming alone had brought more misery and vice into this State, and blasted the happiness of more families, than all the duels that were ever fought here. How numerous are the instances, within our own observation, in which the most calamitous results have followed from an indulgence in that vice? Should we say, for that reason, that all who are, in any way, at any period of their lives, connected with gaming, shall be disfranchised? Notwithstanding all the laws that could be framed, there would be cases in which the most worthy citizens, impelled by a sense of injury, and by high feelings of honor, would be brought under the penalty of the proposed provision. In these cases, men risked all that they loved in life Did not Hamilton and Decatur sacrifice honors, rewards, and all that they loved on earth, to the sense of honor which urged them into private conflict. Every means should be adopted to prevent the crimes which could place honorable men in such a situation.

But should we suffer the gamester and seducer to escape our notice, while we pursued, with relentless severity, those who, perhaps, by the crimes of those very men, have been driven to seek private redress. Let us not put this offence of duelling alone in the Constitution, when there are so many other crimes equally deserving of punishment, and

much more likely to be committed; and which, in fact, were often the causes of duels. Duelling was also prohibited, and liable to be severely punished, by existing laws. In the case of the last duel that took place in the vicinity of Philadelphia, the Judge decided that wilful murder had been committed, and the parties would have been punished accordingly, if they had been found at the time.

The proposed clause was also objectionable, because it seemed to stamp with our disapprobation many men who had formerly had the misfortune to be concerned in duels. Your Hamilton, your Decatur, your Clay, and your Randolph, risked their lives in private combat; and though he was far from approving of their conduct, yet he did not deem it necessary to step out of his way to condemn it.

Mr. Merrill had no respect, he said, for that code of honor which sanctioned duelling, but he was obliged to pay respect to the provisions of the Constitution. He had some scruples as to the constitutionality of the proposed clause, and he would inquire whether, by its adoption, we would not place in our laws a futile provision. The Constitution of the United States provided that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Could we go beyond our own territorial limits to inflict a punishment for any offence? Could we prevent the commission of any act in a foreign jurisdiction? Could we have any authority or control over any act committed beyond our borders? He wished an answer to the question. Our authority in the matter was at least doubtful. He was strongly of opinion, also, that the Legislature had not the power to disfranchise any citizen. In that case, the amendment of the gentleman from Northampton, (Mr. Porter) took the true ground, for it gave the Legislature all the power it ought to have to extirpate the principles and practices tolerated under this false code of honor. Let it not be said that the act will be nugatory for the purpose of correcting this criminal indulgence of passion. He submitted whether we could visit any act of our citizens committed beyond our borders, could we prevent those who committed an offence out of the State from enjoying all the privileges of citizenship in the State. He could not vote for either of the propositions, except that of the gentleman from Northampton.

Mr. Porter, of Northampton, remarked that the delegate from Luzerne, had referred to the provisions of the Constitution of Virginia and Tennessee. But he was disposed to judge of principles by their practical results. We have no constitutional provision against duelling in Pennsylvania. But we have few or no duels in Pennsylvania, and in Tennessee, dirks and bowie knife scrapes are as common as the weekly newspapers which bring us the accounts of them. Our Legislature has done more to repress the barbarous custom of duelling than all the constitutional provisions of other States, where the moral tone of the people was not in accordance with the legal enactments. He did not believe that any constitutional provision on the subject was necessary; but, if the doctrines of the gentleman from Adams were correct, then the most proper course would be to give further authority to the Legislature. We could put on record our opinion that the custom is barbarous and destructive of the interests of society, and leave it to the Legislature to devise the most proper means to suppress it. Why should we single

out this practice for punishment, when the whole catalogue of other black offences was omitted. Why should those who have been guilty of perjury and of murder, be restored to society and the rights of citizenship, while a man, who has once been driven into private combat by a deep sense of injury, is forever to be excluded and disfranchised? He could not conceive on what code of morals this difference was founded. Duelling ought to be suppressed, but it could not be selected for punishment, as the unpardonable sin. He had known some men who had been, in the course of their lives, engaged in duels and they had lived to regret and repent it, and to become honored and respected citizens. Should we be more severe in regard to these offenders than the precepts of our religion? Should we say that an offence, committed in boyhood, is past forgiveness, and never to be pardoned by society. The Constitution of this State, whose base was charity and mercy, ought not to have upon it this blood stained record.

It was said that the amendment which he had proposed was mere mockery. He certainly did not intend it as such. Again: it is said that it is only giving to the Legislature a power which they already have. He offered it however, to satisfy the minds of those who think there ought to be something in the Constitution on the subject. It had been asked triumphantly whether the laws had heretofore prevented the commission of this crime; he however, whould ask those who put this inquiry, whether a constitutional enactment would answer the purpose better. It had been asked too, if any man had ever been convicted under this act of assembly. He, in his little experience, had known two convicted under it, and he had no doubt there would have been more if the offence had been more frequent. There have been convictions, and if there has not been more of them, it is because the crime has not been so frequent in our Commonwealth. Duels are a rare thing in Pennsylvania, and it is for the reason that public opinion discountenanced them. It is said that this constitutional provision ought to be adopted, because although the laws of the State provide a punishment, yet there cannot be found persons who will institute suits and come forward as witnesses in such cases, so that the parties in a duel might be convicted; but that the high party contests which take place in our State will bring out men, who will come forward, and contest the seats of persons engaged in such practices, in the Legislative halls, in case they are ever elected to fill such places; and that although a man may have committed this act out of the jurisdiction of this Commonwealth, and while, he was a citizen of another State, he can be excluded from the enjoyment of these privileges. He denied this—he denied that you had any such jurisdiction as this, and should like to know by what authority gentlemen claimed it. Our jurisdiction is limited—it is bounded on the south by Mason and Dixon's line, on the west by the state of Ohio and the lakes, on the north by New York, and on the east by New Jersey, and your Constitution and your laws give you no jurisdiction without those limits. You cannot make a man amenable to the laws of Pennsylvania for offences committed out of the the State. He should like to see gentlemen's authority to support this new doctrine, and if they had none they must yield it up. Well, again, it is said in support of this constitutional provision, that a man must be prosecuted and convicted under the laws of the Legislature. Well, if he mistook not, there was a constitutional provision at present

existing that no man "can be deprived of his life, liberty or property unless by the judgment of his peers and the law of the land." He had heard to be sure, that in some courts a man was presumed to be guilty until he was found innocent; but under our most mild and christian laws a man is presumed to be innocent until he is proved guilty. When a man has committed a criminal offence he is entitled to be tried by his peers under our present Constitution, and if you strike out that principle you strike out one of the most salutary and important principles in the instrument. But it is said that duellists are men generally aspiring to office, and if you place this check upon them it will have a salutary effect in preventing duels. Now there have been a few duels fought by the great men of our nation, and he believed as many in Tennessee, where there is a clause in their Constitution on the subject, as in any other State, and it never prevented these men from rising to honors and to offices. From his own observation in relation to this matter, he did not believe that we should have a constitutional provision to disqualify any man because of his having been engaged in a duel. The duels which have occurred in this part of the country had been principally between young men—men under age—and they could only be looked upon as the mere follies of youth. He knew of none of the great men of Pennsylvania being engaged in duels of late years. He had to be sure heard of some, but he required more than mere hearsay evidence before he made the charge. He knew not why the follies of youth should be visited with such a penalty through life. He knew not why, although you may have evidence that the person engaged in a duel was convinced of his folly, and regretted it, and mourned, perhaps, in sack cloth and ashes, at having sent a fellow being prematurely to eternity, he should never be permitted to repent of his follies and be forgiven. He did not agree with the gentleman from Adams, (Mr. Stevens) that this was the only kind of murder that ought never to be pardoned. He did not justify duelling yet he believed there were circumstances under which men cannot well avoid it. He did not say this according to christian principles, because there it was forbidden, but he spoke with regard to the unregenerate mind. He would illustrate his idea by giving an occurrence which took place in the city of Philadelphia some yeas ago. It happened that an individual in that city insulted an old lady very grossly, by some means or other, and her son met him afterwards, and pulled his nose. A suit was brought in consequence, and the matter referred to arbitrators, and among the arbitrators were two elders of churches. After the evidence was all gone through and the insult proved, so atrocious was its character, that one of the old elders of the church, sprang upon his feet, and said, if the insult had happened with any of his family, he would have knocked the person down who gave it, if he had been as big as a house. He thought then that if this would have such an effect upon a person of advanced years and christian profession, that these indiscretions of youth, were somewhat excusable, at least they ought not to be visited with so severe a penalty as that proposed in the amendment of the gentleman from Lancaster.

He knew an instance of two young men in his own neighborhood, indeed he might say they were but boys, as they were only about eighteen years of age, who fought a duel. They met on the day appointed, fired, and one was shot through the body, and for a long time his life was despaired of, and subsequently he died. The other was now a man

of high respectability now in another State, and has been so during the whole of his life; yet adopt this principle and such men would be blasted for life for the indiscretion of youth; adopt this principle and all their future prospects would be blasted and all their future usefulness destroyed. Sir, there is such a thing as putting the mark of Cain upon men, and he for one was unwilling to do it; he was unwilling to place a man in society in a situation for the slow unmoving finger of scorn to be pointed at for all his life. You do not by this produce reformation, and repentance, which is the great object of all our punishments. When the proposition which has just been passed upon by this body was before the committee, he advocated the right of conscience, because he respected the conscientious and religious opinions of others, and he advocated this proposition which he had submitted, because he was opposed to placing a man in such a situation that no reformation could wipe away his guilt. He did not wish to place in the Constitution of Pennsylvania a principle which was directly contrary to that holy religion which we all subscribe to.

Mr. Agnew said, when he read to the Convention the act of the Legislature on the subject of duelling, he did not do it as the advocate of duellists, or the friend of the duellist. The question to him was a new one, he must confess, as he had not more than given the laws of the State on this subject a casual reading. He was however, not altogether convinced but that the Legislature had the power to deprive a man of the right to hold offices for the commission of some enormous offence, without any constitutional provision, as he did not understand that these rights were guarantied to a man by the Constitution, so as never to be taken away. It appeared to him, that rights of this kind were no more guarantied, than natural rights. He apprehended that the right of liberty, was as sacred a right, as the right of holding office, yet no man pretends to say that, notwithstanding the Constitution had not given the power to the Legislature to enact laws to take away this right, the Legislature had not the power to do so. A man under your laws may be sentenced to prison for life, and lose those political rights which it is supposed the Constitution guaranties; because his confinement prevented the exercise of those rights. The conviction of perjury, of felony, would deprive a man of those rights, which it was supposed the Constitution guarantied. He apprehended that ever since the laws of England existed, and were introduced into Pennsylvania, they had always taken away from that man who was found guilty of these crimes, the character of a free man. Every free man had the right to vote, yet that character of the freeman may be taken away by your laws. He would ask gentlemen, whether a man convicted of felony, could not be expelled from the Legislature, without any law being enacted on the subject? It occurred to him that if a man was convicted of a crime of so odious a nature, he could not maintain a seat in that body. It is to freemen that certain political rights are given, as for instance, to freemen is given the right of voting; but could a person convicted of perjury, come forward to the polls and offer to take an oath? Could he be permitted to take that oath? He apprehended not, because the laws say that he is not a competent witness. Well, if he is prevented from being a competent witness, he would ask if it would not prevent him from voting. The very act of voting in that particular instance might be prevented by the law, which prevents him from being a compe-

tent witness. If he recollected right, Blackstone says "that persons convicted of infamous crimes, lose their free law"—the law regards the rights of freemen. It seemed to him that the word freemen was to be taken in this acknowledged sense under the Constitution, and he understood when that character was lost or taken away by law, he comes no longer within the provisions of the Constitution. Although this was a new question to him and he did not pretend to have reflected on it, with that consideration to which it was entitled, still as society must be protected, and we have the right to take the liberty from a man who has been guilty of certain offences, and prevent others from being witnesses in a court of justice, he apprehended that we had the right to pass laws depriving men from holding certain offices, and that the Legislature had in the instance before the committee, the power to pass such law, as was a necessary punishment, for the preservation of the peace of society. Is it to be argued that the individual who has committed the most atrocious crime against the order of society, is to be protected by your Constitution, when the man who has stolen a loaf of bread, is deprived of his liberty in consequence thereof? Is this the kind of justice which gentlemen would expect the Constitution to meet out? He trusted not. He held that the laws were competent to provide punishment for every offence. He could not support the amendment of the gentleman of Lancaster, because he believed it went too much into detail, and he did not believe we ought to go into details in constitutional provisions; but if the Legislature had not power competent to remedy the evil, he was willing to confer the power upon it.

Mr. Chandler said he rose merely to express an opinion arising out of the inquiry on the other side of the house, that it is not in the power of the freemen of the State to reach the privileges of those who come among us from other States. It is objected that we cannot by any constitutional provision, deprive any man of the privileges in this State, which he would have in that State, from whence he came, merely because we must give to him the privileges of citizenship. Surely it is in our power, in our fundamental law, to say what person shall be eligible to office, and what person shall not. We may say that any gentleman shall not be eligible to office; we may if we choose, say that personal deformity shall prevent him. The question then appeared to him, to be entirely as to the propriety of exercising this power, which we hold in our capacity of parliamentarians or legislators. He was far from being the advocate of duellists, and while he was ready to admit that public opinion had had a great influence upon Pennsylvanians, in relation to this matter, still he thought there should be some provision in the Constitution of the State, to express a public abhorence of that act, but whether we should make the Constitution a penal code, was another question. He believed this should not be done. A good deal had been said by different gentlemen, in the way of apology for duelling. It had been said that duels had preserved the chastity of the marriage bed. If it had done that, he almost regretted it, for it may be considered an argument in favor of the continuance of that kind of personal satisfaction. But if any kind of satisfaction was to be allowed for this offence, he thought the more preferable mode would be to adopt that system practised by a member of Congress, from the state of North Carolina, by the name of Potter. That mode he thought would be far preferable to duelling. It was said that this crime of which we were speaking, duelling, was no worse than scandal, calum-

ny. He believed however, in most instances that the law reached this sort of offence, and where it did not, public sentiment reached it in such a way as to have the same effect. That public sentiment however, was the power against which we are now trying to legislate, to put into every man's hand, a whip to lash the offending rascal through the world. We are providing the means of preventing the repetition of this great crime, in our Commonwealth. We ask not that the man who has thus offended shall be punished, but we ask that you may legislate against public sentiment, which has been erroneous on this point, and take away the prejudices of your citizens, which have been too much in favor of this practice. We all know that the leading characteristic of our citizens, is a desire of office. The accession of wealth is so easy in this country, that that distinction is not remarkable. Every man with industry can become rich in this world's goods, but it is not every man who can become Governor of the State, or President of the United States ; it is not every man who can become a member of Congress, or stand a legislator upon this floor, dictating laws to the people of this Commonwealth ; but it is almost every man who expects at some day or other, to arrive at it. Sir, there are men in their workshops, boys if you please, drawing the thread or driving the jack plane, who would start with horror at the very idea of this proposition, standing in the path between them and the Executive chair of this Commonwealth. He thought then, that we ought to have some enactment in our Constitution on this subject, as duelling has lost much of its hateful character, from the indulgence of public opinion. He did believe that more lives were lost by pugilism in the present day, than by duelling. There has scarcely been an instance of a pugilistic exhibition, but one or the other party was either very much injured or killed, yet it is not necessary to insert a clause in the Constitution of Pennsylvania, on this subject, because public opinion is correcting the evil, as every man who is engaged in such combats is driven out from all genteel society. He did desire that the Constitution should be spared this feature that belongs particularly to the criminal laws of the State ; but that it should direct the Legislature to enact such laws as will of themselves, if possible, prevent recourse to this mode of settling difficulties. With regard to the degree of punishment to be inflicted for this offence, perhaps every one had their own opinion. He believed the law should he so framed as to remedy the evil, but he did not desire that it should be operative upon the offender forever, if he lived that long. He agreed with the gentleman on the other side of the house, that this kind of punishment; this setting a man up for the finger of scorn to be pointed at during the remainder of his years, would have a very bad effect. It would be creating among us, if duelling should ever exist in this Commonwealth to any extent, a band of assassins, who had nothing to live for, and nothing to hope. He had no doubt but there had been some engaged in duels, who would willingly have avoided it ; some who were possessed of the best and kindest feelings which exist in the human bosom, and who regretted it afterwards every moment of their lives, because their conscience told them that they had done an act which was in direct violation of the laws of God, yet they could not avoid it without themselves being made an object for the finger of scorn to point at. All of us know that we had better be sleeping in our graves, than be subject to the derision and the scorn of that society in which we live. We know that it would be better

not to engage in these kind of contests, but, we know that being among men who frequently give insults, those of strong passions are tempted to resort to this kind of redress for personal injuries; therefore, we cannot and we ought not to regard the crime as inexpiable. He asked for a stigma to be put upon this crime, which would aid in correcting the evil, but not that it should reach down from the father to the children, so that another generation might share the curse. He held no such doctrine as this, and would conclude by adopting the words of the poet, that, "He who by repentance is not satisfied, is neither of earth nor heaven."

Mr. DICKEY called for the yeas and nays on Mr. PORTER's amendment, which were ordered.

Mr. CLARKE, of Indiana, would not have troubled the committee with any remarks of his, but that he felt bound to vote against the amendment to the amendment. He thought that we ought to have some constitutional provision respecting this species of crime, but he did not think that the amendment to the amendment reached the case. It is merely directing the Legislature to provide for punishing it, whereas, the amendment itself as well as the report of the committee, goes to provide the punishment. He liked the report of the committee, therefore, but the amendment of the gentleman from Lancaster, pleased him still better, as being more explicit. He should therefor vote against the amendment to the amendment, and for the amendment of the gentleman from Lancaster. To his view, we had not in this country a sufficient horror of blood, we do not set a sufficient value upon human life, and we are strongly disposed to right our grievances by having recourse to private revenge. Now if we examine the moral law, and have recourse to the text book of our religious faith, we will find that the whole tenure of the Scriptures is against taking away the life of our fellow man, and that adequate punishment is recommended for the offence. There you will see no distinction between murder in the first or the second degree. This was a distinction which had grown up with our modern notions. Even the accidental taking away of life—the merely flying of an axe off the handle and killing another, was such an offence that a man had to fly to a city of refuge, in consequence. So careful was the Moral Governor of the Universe, in relation to human life, that he provided that it shonld not willfully be taken away, that every precaution should be taken to prevent it. "Vengeance is mine," saith the Lord, "and I will repay it." This was one of the rights which it might be supposed that we had in a state of nature, but which we gave up upon entering into civil society. It was universally agreed so far as he knew, that this right was yielded to society—we dont claim the right of protecting ourselves, but we give that right up to society, and it protects us. He did not believe that we carried the punishment of many offences against the peace and safety of society, far enough in this country. We find the code of Great Britain, much stronger than ours. There to be sure, they hung men for offences which we did not consider of sufficient enormity to require such a punishment, but in many of their other laws, he thought they were in advance of us, on this subject. There they held the managers of a turnpike, or the proprietors of stages and steam boats, accountable for the accidents which occur, in consequence of negligence on their part. Parliament has provided adequate punishments for all these cases, but how is it with us? Whole steam

boat loads are blown up and perhaps one half of them scalded to death, and what is the remedy? There is a noise about it in the newspapers, for a short time, and that is the end of it. We are exceedingly careful in some things but not enough so in others. The gentleman from Northampton, (Mr. Porter) says we should not make the Constitution a criminal code. Now when we enter into society, we should provide the means of protecting us in all things. The ordinary Legislature is sufficient for ordinary protection, but here was one crime he apprehended which the ordinary Legislature could not meet. They cannot punish it because, as had been said, it may have been committed out of the State, and by that class of society, as was remarked by the gentleman from Adams, that the law does not reach. It had been well remarked by some English statesman, that "the laws were but cob-webs. They only catch the small and weak flies, while the large and strong ones break through." You punish the man who has been guilty of stealing a loaf of bread, but you reward the man who shoots down his fellow man in cold blood, and you are not willing now to introduce a provision in the Constitution, because it may operate upon some persons who have been of some standing in the Commonwealth, and deprive them of holding places of honor. But it had been said that we could not punish a person who had committed this offence out of the State. He did not think that a deprivation from offence was a punishment. Have we not a right to say that a man who has committed this offence, shall not hold office in the State—has any man a right to office? The people have a right to elevate us to high offices, but we have no right to claim it. We do not sit here by virtue of our own right, but in virtue of the right of the people. We may therefore, in the fundamental law, say who shall and who shall not hold office. Gentlemen say that a man must be tried by his peers. We admit that in ordinary cases, but we say that here is a crime that the ordinary Legislature cannot meet, and therefore we will provide in the Constitution that whosoever commits it, shall neither give a vote, nor hold an office in the Commonwealth. He was clearly for some constitutional provision, and he thought the amendment of the gentleman from Lancaster, provided for the case in the best way, and he should therefore vote against the amendment to the amendment, and for the amendment of the gentleman from Lancaster.

Mr. PORTER, of Northampton county, modified his amendment to the amendment, by adding at the end thereof, the words: "by disfranchisement, legal disqualification to hold office, or otherwise."

Mr. FORWARD said, that he liked the amendment to the amendment, as it had been improved, better than he liked it in the form in which it originally stood. Still, however, he should feel constrained, reluctantly to vote against it, for the purpose of reaching the more preferable amendment which had been offered by the gentleman from Lancaster, (Mr. Hiester.) Let us come to the plain truth of the matter, and what was it? That there was a certain class of men—men of high principles and lofty aspirations—who claimed to be exempted from the force and obligations of the laws of the land; in other words, a class of men who claim this privilege on the ground of honor—or the principles of what was termed "the code of honor"—a rule among equals which was perfectly consistent with every vice and every crime that could stain the human charac-

ter. Let the practice go down, and there would be an end of this code of honor altogether. Let the farmers and mechanics of the country get hold of it, and what would become of the laws of the country? But this was not the case. All of us knew that this code of honor, this practice of duelling, was kept up for the benefit of a class of men, moving in a sphere to which few could afford to aspire; all of us knew that this code would not do for the common people. He intended these observations as general; he did not allude to any member of this body. He spoke the truth, as he believed the truth to be. This code of honor which flourished in the present day, was related to the ancient code of chivalry, and had in fact been derived from it. At one period of the history of the world, noblemen—cavaliers as they were called,—were allowed to bear arms forty days in the year. They had what was termed in those days, tournaments; and they fought duels, but the common people of that day were not allowed these privileges. They were indeed permitted to look upon, and to admire this display of heroism, but they could not take any part in it. Thus we saw that this mode of fighting had degenerated from time to time, until at last, in our day, we had come down to the dagger and the bowie-knife; instruments of death which had been brought into such common use in some parts of our country, that a man's life was not safe, since he knew not at what moment he might be attacked.

If the common people valued life so little, as to be tempted to this barbarous practice, you would hang any of them that were convicted; whilst, under this code of honor, a man might escape with impunity. Thus a man of honor, as such a character was technically called, might shed blood, or might murder an excellent man, and yet be held worthy of office and of favor. He was of opinion that this code of honor had better receive some notice in that better code which this body was now framing for the government of the people;—the Constitution of Pennsylvania. He believed that such a notice would be a victory gained by the mass of men, over this code of honor—falsely and infamously so called. But he had been told that this would not have the effect to suppress duelling; that there was an inclination to it in the minds of high and honorable men. He could not know the fact, but it seemed to be supposed by gentlemen that the mere opposition to this measure gave them a title to be considered courageous, and placed them on that elevated platform set apart for those who show obedience to the rules of this code of honor. He was in favor of making a man who had been engaged in duelling, ineligible to office, for the very reason that aspiring and lofty men were those very persons who were almost exclusively engaged in this practice. A man who attempted to bring one of these fashionable murderers to justice, would be suspected of being a coward—a poltroon, &c. &c. Let this provision be inserted in the Constitution, and his word for it, the people of Pennsylvania would enforce it. And he did not say this, for the purpose of reaching those who were beyond these walls. He made no such appeals to their favor. It had been said, that we should not punish men until they were convicted of a crime. The Constitution provides that there shall be certain disqualifications for office in certain cases; as, for example, "that no person shall be a representative who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the State three years next preceding his election, and the last year thereof, an inhabitant of the city or county in which he shall be chosen, unless he shall have

been absent on the public business of the United States, or of this State," &c. And in some states, it was known that even clergymen were not eligible to office. He did not take the ground that this provision as to duelling, was to be inserted, for the purpose of punishment; but he and those who acted with him in this matter, argued that such a provision would reach the minds of men, and would deter them from the practice of duelling by reason of the serious consequences to themselves which must follow a disregard of the laws in this particular. We should not legislate on the subject, but it would be competent for us to judge of the qualifications of persons seeking office, and to ascertain whether they had been guilty of an act noticed in this amendment. This was all that he desired to effect here. He was perfectly aware that the act of assembly had a beneficial effect in this Commonwealth; he had known prosecutions brought under it. He believed that it had done good, and that it would still continue to do good—but he thought, at the same time, that the provision here contemplated would be much better, and would lead to still more beneficial results. The people would then see that a prohibition of this barbarous practice was placed in their fundamental code; and it would stand there as an admonition and a beacon to those hot spirits, under the age of twenty-one years, who might be looking up to the pinnacle of power, so to conduct themselves as not to forfeit those rewards of a well-directed and successful ambition, which are alike within the reach of every citizen in our Commonwealth. He denied that there was any punishment in this provision. All that it intended was, that those who were engaged in this practice of duelling, should be disqualified from holding office. He looked upon it as a measure of clemency, rather than of punishment, and he trusted it would meet with the approbation of this body.

Mr. Bonham, of York county, said, that he could not vote for the section as prepared by the committee; nor could he vote for any other provision being placed in our fundamental law on this subject. He had heard it declared, over and over again, in this house and out of it, that the few amendments which were principally desired by the people of the Commonwealth generally, were such as would go to the curtailment of Executive patronage. The Convention had now been engaged during a period of about eight days, in the discussion of a matter, which was, comparatively speaking, of very small moment, and which resulted in leaving the section of the Constitution just about in the same position as that in which it previously stood. It was admitted that there had been a considerable waste of time on that section of the Constitution which had just been disposed of—and which, after all, had been scarcely touched by the Convention. He alluded to the militia system. Under the Constitution of 1790, the Legislature had the right to say, whether the militia should turn out one day in five or ten years, or as seldom or as often as might be directed by law. He could not see that, after all the time and consideration which had been wasted on that subject, the evils complained of had been in the least degree remedied. And now this new subject was introduced to consume the time, and to harass the deliberations of this Convention; and, as it seemed to him, with as little prospect of beneficial results. It was a subject which must, from its very nature, occupy several days of very valuable time; and yet, it was certain that, after all that could be said about it, nothing could be done which would tend, in any degree, to remedy the evils which were complained of. How was

the remedy to operate? He would ask the members of this committee, what did a young man, in the heat of youthful blood, and suffering under the sting of real or supposed wrong, what did such a man care about being excluded from office? Or, to go further, what did the aged man care for it? He would much rather be disfranchised from the privilege of holding office, than he would become amenable to the law, be immured within the walls of a prison for a year or more. Punishment to this extent might already be inflicted under the existing laws of our State. He (Mr. B.) was himself entirely opposed to duelling; he considered it as altogether wrong and unjustifiable—a mere relic of the barbarism of past ages. But he would leave its punishment to the law of the land. The law should be severe enough to prohibit the practice. He, for one, would be willing to go almost to any extent to put an end to it. He would even go so far as to give his sanction to a rule, similar to that which had once been established by one of the Kings of Europe, (the King of Prussia if he, Mr. B. remembered correctly) which was, that where two parties fought a duel, and one of them was killed, the survivor should be executed. Mr. B. thought that the establishment of such a rule in this country, would effectually put a stop to duelling; and he was in favor of leaving that part of the law open at all times to legislative action. Let the Legislature make such provisions as would most effectually check this barbarous and inhuman custom among us. He hoped that the committee would not consume more of its time in a discussion which could be attended with no advantageous consequences. If, said Mr. B., we are to go on, day after day, and week after week, adding section to section, and amendment to amendment, we shall have a larger volume of the Constitution of Pennsylvania alone, than this book which I hold in my hand, and which contains all the Constitutions of the twenty-four States of this Union. Complaints have been heard of the time which has been already spent in our deliberations, and I think that we ought not to suffer the introduction of any new matters, which are calculated only to waste still more of our time, to distract our deliberations, and to prolong the session of this Convention to an extent which no man can foresee.

The gentleman from Adams, (Mr. Stevens) had stated, that the acts of Assembly providing for the suppression of duelling, have not had the desired effect; but I think there can be little doubt that they have, in a great measure, answered the purposes for which they were enacted. The instances in which this practice has been resorted to in the State of Pennsylvania, have not been numerous. It is known to all of us, however, that they are more frequent in the Southern States, where constitutional provisions for the prohibition of the practice are made, than they are here among us. If any remedy can be devised, which would operate more effectually for the suppression of duelling than the laws which now exist, I, for one, should most cheerfully see them enacted and carried rigidly into force. But I do think that the provision which it is proposed here to insert cannot have the desired effect; and, for that reason, as well as for others which I have assigned, I shall vote against the amendment, as it has been proposed by the gentleman from Lancaster, (Mr. Hiester) and in favor of the amendment to the amendment, as modified, which has been offered by the gentleman from Northampton, (Mr. Porter.)

And the question was then taken on the amendment to the amendment, as modified, and was decided in the negative, as follows, viz:

Yeas—Messrs. Agnew, Baldwin, Banks, Barnitz, Bedford, Bell, Biddle, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clark, of Dauphin, Cleavinger, Craig, Crain, Curll, Dickey, Donagan, Foulkrod, Fry, Gilmore, Grenell, Hastings, Helffenstein, Keim, Kennedy, Lyons, Martin, Meredith, Merrill, Porter, of Northampton, Purviance, Royer, Russell, Scheetz, Scott, Serrill, Taggart, Sergeant, *President*—43.

Nays—Messrs. Ayres, Barclay, Barndollar, Bigelow, Butler. Chandler, of Chester, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cline, Coates, Cochran, Cope, Crawford, Crum, Cunningham, Darlington, Darrah, Denny, Dickerson, Dillinger, Donnell, Dunlop, Farrelly, Fleming, Forward, Fuller, Gearhart, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Kerr, Konigmacher, Krebs, Maclay, Magee, Mann, M'Call, M'Sherry, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Pennypacker, Pollock, Porter, of Lancaster, Read, Riter, Rogers, Seager, Sellers, Seltzer, Shellito, Sill, Smith, Smyth, Sterigere, Stevens, Sturdevant, Thomas, Todd, Weaver, Weidman, White, Woodward, Young—77.

So the amendment to the amendment was rejected.

And the question then recurred on agreeing to the amendment of Mr. Hiester.

Mr. Dunlop said, that with every feeling of respect towards the gentleman from Lancaster, (Mr. Hiester) he (Mr. D.) did not think that the amendment improved the report of the commitee in any respect. The gentleman from Lancaster and himself, had both been members of the same committee to which this article had been referred. This amendment, now offered, was originally proposed and discussed in committee. He (Mr. D.) after a careful examination of the whole ground, had preferred the original report; and, if he was not mistaken, he believed also that that report had, in committee, met the views and approbation of the gentleman from Lancaster. Mr. D. believed he was correct in his recollection on this point.

Mr. Stevens said, that he preferred the amendment of the gentleman from Lancaster, to the original report of the committee. The original report made it the duty of the Legislature, to point out some mode by which the proof of an individual having been engaged in a duel should be established. Under the amendment of the gentleman from Lancaster, the proof was to be established in the usual mode in which all disqualifications for office were to be established, that it was to say, it was left to the body of which a person might propose to become a member. He was in favor of leaving this to be established in the same way; or else legislative provision would render it nugatory as it was at the present time.

Mr. Read said, that if he was correctly informed, the section as reported by the committee was drawn up by the gentleman from Lancaster, (Mr. Heister.) It was that gentleman's own peculiar measure, and he (Mr. R.) was willing that that gentleman should have it in any phraseology which he preferred. He (Mr. R.) should vote for the amendment. The substance of the two things did not differ, although the phraseology did.

Mr. Hiester said, that it was true, as had been stated by the gentleman from Susquehanna, (Mr. Read) that he (Mr. H.) had submitted the

original proposition in committee, in the form in which it now stood. It had met with his own approbation at that time, and it would do so still, in case he could not procure that which he conceived to be still better. He thought that the other was more explicit, for the reasons assigned by the gentleman from Adams, (Mr. Stevens)—namely, that it was left to the body which the person proposed to enter to decide on his qualifications. He hoped the amendment would be agreed to.

And the question on the amendment was then taken, and decided in the affirmative as follows, viz:

YEAS—Messrs. Ayres, Barndollar, Barnitz, Brown, of Lancaster, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia. Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke. of Indiana, Cline, Cope, Craig, Crum, Cunningham, Darlington, Darrah, Denny, Dickerson, Forward, Fuller Gearhart, Grenell, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hyde, Jenks, Kerr, Konigmacher, Krebs, Maclay, Mann, M'Call, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Nevin, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Read, Rogers. Royer, Russell, Saeger, Sellers, Seltzer, Shellito, Sill, Smyth, Stevens, Sturdevant, Thomas, Todd, Woodward, Young—68.

NAYS—Messrs. Agnew, Baldwin, Banks, Barclay, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Cleavinger, Coates, Cochran, Crain, Crawford, Curll, Dickey, Dillinger, Donagan, Donnell, Dunlop, Farrelly, Fleming, Foulkrod, Fry, Gamble, Gilmore, Helffenstein, Hopkinson, Houpt, Ingersoll, Keim, Kennedy, Lyons, Magee, Martin, Myers, Overfield. Porter, of Northampton, Riter, Scheetz, Scott, Serrill, Smith, Sterigere, Taggart, Weaver, Weidman, White, Sergeant, *President*—51.

So the amendment was agreed to.

The question then recurring on agreeing to the report of the committee, as thus amended;

Mr. MANN asked for the yeas and nays which were ordered.

Mr. PORTER, of Northampton, then moved to amend the report of the committee as amended, by adding to the end thereof, the following words: "But the Executive pardon, may remit the said offences and all its disqualifications."

Mr. BANKS demanded the yeas and nays on this amendment to the amended report, which were ordered.

Mr. KERR, of Washington county, rose to ask for information. He would inquire from the chairman of the committee, to whom this article of the Constitution had been referred, whether the Governor of the Commonwealth, under the existing Constitution and laws, would not have the right to pardon in this case, as well as in all others?

Mr. PORTER, of Northampton, said that, in reply to the gentleman from Washington, he would merely say, that the offence being created by the Constitution, and being declared to be unpardonable, the Governor would not, in his, (Mr. P's.) judgment, have the right to remit the penalties imposed, unless the power to do so was specially granted in the Constitution itself. He would add that this was the main reason which had induced him to offer an amendment.

Mr. SERGEANT said, that he concurred in the opinion that had been expressed by the gentleman from the county of Northampton, (Mr. Porter) that, if the Convention should determine to insert in the Constitution a clause declaring that a man who had done certain things, should never

hold office, no pardon could be extended to him, either by the Governor or any body else. The very commission of the act itself, was made to operate as an incapacity to hold office, whether it was criminal or not; or whether the party was convicted or not, if there were any other mode of proving the act but a conviction; so long as that stood against a man, he was disqualified. It was a perpetual bar, which never could be removed; and to my mind, said Mr. S., it is a very dangerous sort of thing, and one which may hereafter cause some of us much anxiety and pain; because, as to duelling, whatever any of us may think of it in the abstract, no man can deny that there are degrees of offence. We all know, for example, that duels are sometimes forced upon men, against their better judgment and against their principles, and yet in such a way that it seems almost impossible for them to escape. In other instances, a man may manage a duel in such a way as to convince every body that he never intended to take the life of his fellow man; although, at the same time, in order to maintain his own character and position in society, he is willing to go out and risk his own life in a duel.

Let us look at it in another point of view. That which draws a man into a duel, although it may not justify, may very much extenuate his offence, or his supposed offence. Are these circumstances to carry no weight with them? or are they to be altogether disregarded? Is this alone, in all the vast catalogue of human crime, to carry with it such infamy as never can be removed? I am myself entirely opposed to this whole system of duelling. I should be most happy to see it abandoned throughout our land. But, whilst I entertain these sentiments, I cannot bear the idea of fixing upon a man—under all the extenuating circumstances of anger, of passion, or of inadvertence in youth, or any other age, by which the act may be attended—I cannot, I say, consent to fix upon him for one single act of his life—compulsory as it may have been, extenuated as it may have been—a stigma such as we impose by declaring that, in consequence of that one act, he shall be for ever incapacitated for holding office under our government.

In reference to the practice of duelling, I hold opinions similar to those we have heard expressed this day. I consider it a barbarous custom. I am even willing to say, as has also been said here, that to kill a man in a duel, is murder. And, indeed, there have been many instances of duels, which have resulted in death, in which I have not hesitated to say, that justice required that the survivors should be hanged. But these were cases peculiar, and not frequent. But why should the penalty for this offence be made everlasting, when, you forgive every other crime? Gentlemen say that the insertion of this provision will operate as a preventive. If I could believe that it would have that effect, I would agree with all my heart that it should be inserted; for a provision which would accomplish that object, is the very thing we want. But punishment you cannot get. Every effort to inflict punishment for this crime—and all admit that it is a crime—has done nothing in the way of prevention. You want to prevent it; well, if you can devise any mode by which you can do so, I will cheerfully co-operate with you. But how can you do this. Will this provision operate as a preventive? Will the fear of being deprived of the power to hold office, have the influence to prevent it? At what period of their lives are men most likely to be involved in

difficulties of this sort? Why, at a time of life when they do not dream about office; when they do not even know that such a thing as office is to be aspired to. It is, for the most part, young men, heedless men, whose thoughts have never been seriously turned to inquiries of this sort; but who, in a state of excitement—under the influence of a terrible opinion—terrible to themselves at the moment—are involved in sudden difficulties, which oblige them—yes, sir, that is the proper term—oblige them to vindicate their own honor, by recourse to a certain established and barbarous usage. I do not believe that any man in the world ever sought a duel. I may be mistaken in this opinion. There may, for aught I know, be men in the world, of natures cruel, and hardened enough, to seek it. But, sir, the instinct of life is opposed to it; and I cannot believe that with men in general, the time which elapses between the challenge, and facing each other on the ground, is much happier than the time spent by a criminal between the time of his sentence, and that of his public execution. It is an overbearing error in public opinion which is the cause of all this evil. Young men are ambitious to acquire a character and standing in the world. This they do by conforming themselves to what their associates think is right; and, at one period of their lives, they are very apt to be persuaded that they cannot maintain their rank, unless they yield to this custom. And, at such a period, office is no object to them; they do not think any thing about it. But, as time advances with them, they acquire reputation; they gradually sober down; they begin to obtain the confidence of the community in which they live, and when an opening does at last present itself to their view, what are you going to declare? You are going in this, the fundamental law of your land, to declare, that if a man shall once have been concerned in such a thing as a duel—even though no injury should have resulted—even if he has seriously repented of his fault, and has come to a solemn conviction, as you have done, that the whole thing is wrong, and that he will never be engaged in a like affair again, and will do all that may lie in his power to discourage others from the practice—still this provision is to stand for ever as a barrier between him and every office of honor or profit existing in this Commonwealth. Is this rational? Is it just? Is it righteous? I am ready to go so far as to say, that the practice should be prevented, if prevention is possible; but let us not become wild, and rash, and extravagant, and by such means commit errors on the other side. We may find hereafter, that cases, precisely such as I have described, will occur; and where we may have abundant occasion to regret that, in a Constitution which cannot, as our law now stands, be altered save by the call of a Convention, we have fixed a canon by which a single error—which has been fraught with no serious results—which has never cost a drop of blood—shall operate for ever as an exclusion from office, even though he was but a boy at the time who committed the offence, and however worthy in all other respects he might prove to be. It appears to me, monstrous.

A man may be guilty of such an error in his youth, and yet, in after life, may turn out to be a most valuable and estimable citizen. I know some of this description, and have no doubt that there are many members of this Convention who are acquainted with such instances. I must be permitted to say, for myself, that I never was engaged in this custom. I know but little of what is called the law of honor. I have never acted

in any capacity in it, either directly or indirectly; but I am personally acquainted with very valuable men who have been engaged in those things, who have neither been hurt themselves, nor hurt others, and who are now as correct in their conduct and principles, as any other citizens in the Commonwealth. Would you punish them? Would you place this eternal stigma upon them, and exclude them from office? Do you believe that you can carry public sentiment with you in such a cause? The very last President of the United States, as is notorious to every body, killed another man in a duel. Is not this the fact? And had it ever been a bar to the success of men at elections, that they had ever fought a duel, or had carried a challenge from one man to another? Can you make it so? How will you set about it? But again, if you adopt this provision in your Constitution, the power which you thus create will be irregular. If you could so arrange it as to apply invariably in all cases, it would be free from the objections which I am now about to state. But its operation will be irregular, casual, and must depend on there being a person who is willing to turn informer. Let us look at a case for a moment. Suppose that a gentleman, duly elected by the people, comes here to the Legislature, and goes up to take the oath. The Speaker administers it. No difficulty is raised; not even an inquiry is made. But a contested election comes, in which angry passions are excited, and there is a disposition manifested to prevent his success; and then, for the first time, some old thing of this sort is summoned up against him, as a bar to his holding the office. Such will be the operation of this provision, and it is for this reason I have said that it would be irregular and casual. The law will not be regularly enforced. If such a measure were proposed to be adopted by the Legislature, there would be less objection to it; because the subject would at all times be left open for action, and thus successive Legislatures could alter, repeal, or modify the law, so as to adapt it to particular exigencies, or the general condition of the times. But this provision is to be engrafted on the Constitution of the land, beyond the control of the Legislature, or any other power. I am not willing, Mr. Chairman, to carry the matter to this extent. It appears to me to be carrying punishment altogether too far, if it was applied in all cases; although I do not deny that there may be cases in which it might be proper to apply it Those instances, however, are but few in number. They occur very seldom; not often enough, in my judgment, to justify such a very rigorous measure as this. At all events, if it is determined that the provision shall be introduced into our Constitution, I hope that it will not be unconnected with a power, lodged somewhere or other, to take into consideration the particular circumstances of the case, so as to remit the punishment, if the circumstances should be found such as to justify the remission.

Mr. Merrill, of Union county, said that, as the question had once been decided, he would suggest to the gentleman from Northampton, (Mr. Porter) whether it would not be better to desist from pressing it any farther at the present moment.

The amendment, as it now stood, asked, in substance, that the committee of the whole would overrule its decision made about a half an hour ago. It would be much better, in his opinion, that the subject should be suffered to lie over, until it should come up on its second reading in Convention. By that time the members might come to some under-

standing about it, and thus much time might be saved, and the inconsistency of acting twice on the same question, within the space of one day's session, might also be avoided.

Mr. Hopkinson said, that he was in favor of the amendment which had been offered by the gentleman from Northampton, (Mr. Porter.)

Men were never so much in danger of dong wrong, as when they acted on a right principle; because they felt that the principle was a good one, and they knew not where to stop. It seemed to him that the committee were about to fall into that error now.

No man in this body, Mr. H. felt sure, would offer an apology for the act of duelling; and much less attempt to justify it. But did this furnish any reason why the Convention should go to this excessive length, of having a person who had been engaged in a duel, placed in the same position as a perjurer, or a man who had committed deliberate murder. But even the murderer was not excluded from the merciful action of the law.

It had been well observed, by the President of this Convention, that there were degrees of criminality in the system of duelling. Was it not so? Suppose that a man received a deep wound in his feelings, or was suffering under some deep injury, for which the law gave him no redress; and that he, therefore, threw himself upon the natural right of protection, was that man to be placed on the same platform with the bullying duellist who made it his business to insult, in order that he might destroy? Was there no difference in the degrees of criminality in the two men? And yet, by this provision, if it should receive the sanction of the Convention, both would be placed on the same footing, and both would be alike excluded from all offices of honor, trust or profit.

Suppose the principle here sought to be introduced were put to the test of application to individuals, the friends of gentlemen, however, any gentleman might vote on this question, there was not a man, he would venture to say, who would carry out the principle, and apply it. If it was a correct principle, why should we not carry it through life, and apply it to every case. But does any man here discard and denounce his friend or relative, as a murderer and assassin, because he has unfortunately been drawn into a duel. Would he hold him to be disgraced on this account, and refuse to have any thing more to do with him? He trusted that the amendment would not be adopted.

Mr. Ingersoll was very much averse, he said, to taking the floor on this question, and he had sat very patiently under the discussion. But as his attention had been drawn by the able argument of the presiding officer, in which he cordially concurred, and by the remarks of the gentleman near him, to the very extraordinary proposition now before us, he would add a word in relation to it. What were we about to do? We pronounce an offence to be unpardonable. He would appeal to his respectable and religious friends in this house, and especially to the gentleman from Allegheny, whose zealot remarks on this subject had greatly surprized him, to repudiate this barbarity,—for he called it barbarity. We were about to do that which the Almighty has never threatened to do against the most sinful of men. We are taught to be-

lieve that our sins, though they might be as scarlet, could be made white as snow. Was there a man here who would pronounce that General Hamilton or General Jackson could not be pardoned by the Almighty? Let us not countenance such barbarity. The fifteenth century, so much talked about yesterday, could show nothing so bigoted or black as this. Would any one denounce the father of his country, Washington, because, though he was never engaged in a duel himself, he countenanced and encouraged duelling. It was a matter of history, and would not be denied, that, at one time, when there was much ill blood in the army of the revolution, Washington said that was the best way to give it vent.

There was not a gentleman who had not, in the army or navy, some friend or relation, and did not every one know that a person who there shrunk from personal responsibility, was guilty of unofficerlike and ungentlemanlike conduct, and was liable to be treated accordingly. He would not say any thing in defence of the custom of duelling, but how many illustrious patriots would be condemned under this provision.

As to what had been said by the gentleman from Allegheny about the code of chivalry, it was all a mistake,—an error from one end to the other. He would say not a word about the practice; if gentlemen chose to condemn it, be it so; but, do not let us say that the Executivee shall not have the right of pardon.

Mr. STEVENS said, that those who could not defend the original proposition, now assailed it under the plausible guise of clemency. By mixing with their objections some declamations about mercy, they seek to destroy the whole proposition. This was adroitly done, he confessed; and it was better calculated to lead us from the main argument, than to uphold the pardoning power. If it was not a defence of duelling, it was at least an attempt to screen it from punishment. To this he had called the attention of the committee to prevent their being drawn off. Though he should vote for the amendment of the gentleman from Northampton, he could see nothing so cruel in depriving the murderer in cold blood of the chance of pardon. There was not a man in the house who would not say that killing in a duel was murder. True, no laws against it can be carried into effect. The duellist commonly occupies a position in society which screens him from punishment, and the only punishment that we could inflict upon him was to deprive him of the right of holding office, under this Constitution. To deprive men of the honors and emoluments of office, was the only means we had of checking this passion for honorable murder; and by preventing this punishment, the crime was attempted to be encouraged and kept up. There seemed to him to be a false sympathy excited in favor of the fashionable duellist, the gentlemanly felon, which was not extended to crimes in the lower walks of life. There had been one case in which a low fellow, having, in a drunken frolic, sent a challenge, and killed his antagonist, was tried, convicted, and executed for murder; but it was because he was poor. Had he been a gentleman, and drank wine instead of whiskey, the lance of justice would never have pierced his golden mail. Now it was said that we should not reach him in any way; that we should not even take away from him the robes of office. You would put him in office, with his hands imbrued in the blood of a fellow citizen.

But do not the laws provide for the punishment of crime as an ordinary murder, and has not then the Governor the same power of pardon as in other cases? Will not he ever be fully open to executive clemency? The only thing we propose to do is to deprive him of the right of holding office, and voting; and this is to treat him barbarously and with cruelty. He was surprized to hear such sentiments in this nineteenth century, and in the noon day of christianity.

He had made these remarks in order to put the question in its proper light, but he should vote for the amendment.

Mr. Hiester said he had introduced this provision as a preventive, and not as a sanguinary act. He could well sympathize with many who had been coerced into situations of this kind. He had valuable friends who had been engaged in duels, and killed men. Therefore, he could have no sanguinary object in view. Notwithstanding the arguments he had heard, he believed the amendment of the gentleman from Northampton to be a proper one, and he would vote for it.

Mr. Forward expressed some surprize to hear such an appeal, such an argument, when perhaps, there was no opposition to the amendment. He thought that nine-tenths would be against taking away this power of mercy from the Executive.

The question was then taken and decided in the affirmative, as follows, viz:

Yeas—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Barnitz, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Cochran, Cope, Crain Crawford, Crum, Cunningham, Curll, Denny, Dickey, Dillinger, Donagan, Donnell, Farrelly, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Hyde, Ingersoll, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs Lyons, Magee, Mann, Martin, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Myers, Nevin, Overfield, Pennypacker, Pollock, Porter, of Lancaster, Porter of Northampton, Purviance, Read, Riter, Rogers, Royer, Russell, Saeger, Scheetz, Scott, Sellers, Seltzer, Shellito, Sill, Smyth, Sterigere, Stevens, Sturdevant, Taggart, Todd, Weidman, White, Woodward, Young, Sergeant, *President*—103.

Nays—Messrs. Chandler, of Chester, Clarke, of Beaver, Craig, Darlington, Darrah, Dickerson, Dunlop, Harris, Houpt, Maclay, Mann, M'Call, Miller, Thomas—14.

Mr. Porter, of Northampton, moved to amend the report by inserting between the word "duel" and the word "and," the following words, "or shall be guilty of seduction or adultery."

The Chair decided the motion to be not now in order.

On motion of Mr. Ingersoll, the committee rose, reported progress, and obtained leave to sit again; and,

The Convention adjourned.

FRIDAY AFTERNOON, October 27.

SIXTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. Chambers in the chair, on the report of the committee to whom was referred the sixth article of the Constitution.

The question being on the amendment moved by Mr. Porter, of Northampton, to amend the report, by inserting between the word "duel" and the word "and," the following words, viz: "or shall be guilty of seduction and adultery."

Mr. Porter withdrew the amendment, and moved further to amend the report of the committee, by adding to the end thereof, as follows, viz: "and any person guilty of seduction or adultery, shall be subject to the like disabilities."

Mr. Konigmacher, of Lancaster, moved to amend the amendment, by adding thereto the words following, viz: "or shall be guilty of having taken or administered secret or extra-judicial oaths."

Mr. Read, of Susquehanna, demanded the previous question, which was seconded by the requisite number.

The question being, "Shall the main question be now put?"

Mr. Mann, of Montgomery, asked for the yeas and nays, which were ordered.

The question was then taken, and decided in the affirmative, as follows, viz:

Yeas--Messrs. Banks, Barclay, Bedford, Bigelow, Bonham, Brown, of Northampton, Carey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Craig, Crain, Crawford, Crum, Curll, Darlington, Darrah, Dillinger, Farrelly, Foulkrod, Fuller, Gearhart, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hyde, Jenks, Keim, Kennedy, Kerr, Krebs, Maclay, Mann, Martin, M'Call, Merrill, Merkel, Miller, Myers, Nevin, Pennypacker, Purviance, Read, Rogers, Royer, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, Smyth, Sturdevant, Thomas, Weaver, Woodward—62.

Nays—Messrs. Agnew, Ayres, Baldwin, Barndollar, Bell, Brown, of Philadelphia, Butler, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Cleavinger, Cline, Cochran, Cope, Cunningham, Denny, Dickey, Donagan, Donnell, Dunlop, Fleming, Fry, Gamble, Gilmore, Grenell, Helffenstein, Hopkinson, Houpt, Ingersoll, Konigmacher, Lyons, Magee, M'Dowell, M'Sherry, Meredith, Montgomery, Overfield, Pollock, Porter, of Lancaster, Porter, of Northampton, Riter, Russell, Scott, Serrill, Sill, Sterigere, Stevens, Taggart, Todd, Weidman, White, Young, Sergeant, *President*—54.

The question being on the report of the committee as amended,

Mr. Porter of Northampton, asked for the yeas and nays, which were ordered.

The question was then taken and decided in the affirmatiue as follows, viz:

YEAS—Messrs. Ayres, Baldwin, Barndollar, Barnitz, Bedford, Carey, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Coates, Cope, Craig, Crawford, Crum, Cunningham Darlington, Denny, Dickerson, Fuller, Gearhart, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Houpt, Jenks, Kerr, Konigmacher, Krebs, Maclay, Mann, Martin, M'Call, M'Dowell, M'Sherry, Merrill, Merkel, Miller, Montgomery, Nevin, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Read, Rogers, Royer, Russell, Saeger, Sellers, Seltzer, Shellito, Sill, Smith, Smyth, Stevens, Sturdevant, Thomas, Woodward, Young—67.

NAYS—Messrs. Agnew, Banks, Barclay, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Chambers, Cleavinger, Cochran, Crain, Curll, Darrah, Dickey, Dillinger, Donagan, Donnell, Dunlop, Farrelly, Fleming, Foulkrod, Fry, Gamble, Gilmore, Grenell, Hastings, Helffenstein, High, Hopkinson, Hyde, Ingersoll, Keim, Kennedy, Lyons, Magee, Meredith, Myers, Overfield, Porter, of Northampton, Riter, Scheetz, Scott, Serrill, Sterigere, Taggart, Todd, Weaver, Weidman, White, Sergeant, *President*—53.

Mr. MERRILL, of Union, read a proposition which he gave notice of his intention to move as an amendment on the second reading.

The Convention then rose and reported the sixth article to the Convention with sundry amendments, viz:

So much of the report of the committee as relates to the first section, was amended to read as follows, viz:

"Sheriffs and coroners shall, at the times and places of election of representatives, be chosen by the citizens of each county. One person shall be chosen for each office, who shall be commissioned by the Governor. They shall hold their offices for three years, if they shall so long behave themselves well, and until a successor be duly qualified; but no person shall be twice chosen or appointed sheriff in any term of six years. Vacancies in either of said offices shall be filled by an appointment to be made by the Governor, to continue until the next general election, and until a successor shall be chosen and qualified as aforesaid."

So much of the report of the committee as relates to the second section, was amended to read as follows, viz:

"Prothonotaries and clerks of the several courts, (except the prothonotaries of the supreme court, who shall be appointed by the court for the term of three years, if they so long behave themselves well,) recorders of deeds and registers of wills, shall, at the times and places of election of representatives, be elected by the citizens of each county, or the districts over which the jurisdiction of said courts extends, and shall be commissioned by the Governor. They shall hold their offices for three years, if they shall so long behave themselves well, and until their successors shall be duly qualified. The Legislature shall provide by law the number of persons in each county who shall hold said offices, and how many and which of said offices, shall be held by one person. Vacancies in any of the said offices shall be filled by an appointment to be made by the Governor, to continue until the next general election, and until a successor shall be elected and qualified as aforesaid."

So much of the report of the committee as relates to the third and fourth sections, was considered and disagreed to.

So much of the report of the said committee as relates to the fifth section, was amended to read as follows, viz :

"Justices of the peace and aldermen shall be elected in the several wards, boroughs and townships, at the time of the election of constables, by the qualified voters thereof, and shall be commissioned by the Governor for a term of five years."

So much of the report of the committee as relates to the sixth section, was amended to read as follows, viz :

"All officers whose election or appointment is not provided for in this Constitution, shall be elected or appointed as shall be directed by law."

So much of the report of the committee as relates to the seventh section was considered and agreed to, as follows, viz :

"A State treasurer shall be elected annually, by joint vote of both branches of the Legislature."

So much of the report of the committee as relates to the eighth and ninth sections, was considered and disagreed to.

So much of the report of the committee as relates to the tenth section, was amended to read as follows, viz :

"All officers for a term of years shall hold their offices for the terms respectively specified, only on the condition that they so long behave themselves well, and shall be removed on conviction of misbehavior in office or of any infamous crime."

So much of the report of the committee as relates to the eleventh, twelfth and thirteenth sections, was considered and disagreed to.

So much of the report of the committee as relates to the fourteenth section, was amended to read as follows, viz :

"The freemen of this Commonwealth shall be armed, organized and disciplined for its defence, when and in such manner as may be directed by law. Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service."

So much of the report of the committee as relates to the fifteenth section, was amended to read as follows, viz :

"Any person who shall, after the adoption of the amendments proposed by this Convention to the Constitution, fight a duel, or knowingly be the bearer of a challenge to fight a duel, or send or accept a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of the right of holding any office of honor or profit in this State, and shall be punished otherwise in such manner as is or may be prescribed by law. But the Executive may remit the said offence and all its disqualifications."

SIXTH ARTICLE.

On motion of Mr. FULLER, of Fayette, the report of the committee of the whole was laid on the table, and the Convention resolved itself into a committee of the whole, Mr. M'SHERRY in the chair, on the report of the committee, to which was referred the fifth article of the Constitution.

The report of the majority of the committee was read, as follows:

The committee to whom was referred article fifth of the Constitution, report : That they have considered the several sections, matter and provisions, contained in said article ; and that they have deemed it expedient to

submit to the Convention the following amendments in relation to the same, and no other, viz:

That the same be amended, by striking out the fourth section, and the said article be further amended by striking out the tenth section, and inserting in place thereof, the following:

"The justices of the peace shall be chosen by the qualified voters in such convenient districts, in each county, at such time, and in such manner as by law may be provided; and that there shall be one justice of the peace in every such district, containing not less than fifty taxable inhabitants, and that there may be chosen as aforesaid, an additional justice in every such district, for every one hundred and fifty taxable inhabitants in said district, exceeding one hundred; and said justices shall hold their offices for the term of five years from the time of their choice as aforesaid, except those first chosen under this amendment, who shall be classed as by law may be provided, and in such manner, that one equal fifth part of the said justices in the several counties shall go out of office annually thereafter. The said justices shall be commissioned by the Governor, and may be removed by the Governor, on conviction of misbehavior in office or of any infamous crime, or on the address of the Senate, and the said justices shall give security to the Commonwealth for the faithful discharge of the duties of their office, in such form and manner as the Legislature may direct.

The report of the minority of the committee was then read, as follows:

The subscribers, a minority of the committee on the fifth article of the Constitution, respectfully report: That they concur in the report of the majority of said committee, as to all the sections of the said article, except sections second and fourth. The subscribers recommend the amendment of the second and fourth sections of said article, so that the same may read as follows:

SECTION 2. The Governor shall nominate, by message in writing, and by and with the advice and consent of the Senate, shall appoint the judges of all the courts established by this Constitution, or which now are or hereafter may be established by law. The judges of the supreme court shall hold their offices respectively, for the term of ten years, but may be re-appointed. The president judges of the several courts of common pleas and the judges of the several district courts and of such other courts as now are, or hereafter may be established by law, shall hold their offices for the term of seven years, but may be reappointed. The associate judges of the several counties shall hold their offices for the term of three years, but may be reappointed. For any reasonable cause, which shall not be sufficient ground of impeachment, the Governor may remove any of the said judges, on the address of two thirds of each branch of the Legislature. The said judges shall, at stated times, receive for their services, adequate salaries to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees, travelling expenses, per diem allowances or perquisites of office, nor hold any other office of profit under this Commonwealth. *Provided*, That after the ratification and adoption of this Constitution, the Governor shall by and with the consent of the Senate, reappoint one of the then existing judges of the supreme court, for the term of two years; one of them for the term of four years, one of them for the term of six years, one of them

for the term of eight years, and one of them for the term of ten years; and whenever any vacancy occurs on the bench of the supreme court, by the death, resignation or removal of any judge thereof, the Governor shall, in the manner aforesaid, fill such vacancy by the appointment of a judge, for the unexpired term of the judges so deceased, resigning or removed.

SECTION 4. This Commonwealth shall be by law divided into convenient judicial districts. A president judge shall be appointed for each district, and two associate judges for each county. The president and associate judges, any two of whom shall be a quorum, shall compose the respective courts of common pleas.

The first section of the Constitution was then taken up for consideration, as follows:

"SECTION 1. The judicial power of this Commonwealth shall be vested in a supreme court, in courts of oyer and terminer and general jail delivery, in a court of common pleas, orphan's court, register's court, and a court of quarter sessions of the peace for each county: in justices of the Peace, and in such other courts as the Legislature may from time to time establish."

No amendment was reported to this section.

Mr. PORTER, of Northampton, moved to amend the section in the 4th line, by inserting after the word "peace," the words, "or such other courts as may be established by law."

Mr. PORTER, briefly explained his reasons for this motion. He desired to leave it within the power of the Legislature to reduce the number of courts. It might become matter for grave consideration, whether the public interests would not be promoted by the substitution of a single court or courts. As the section stands, the Legislature can only establish additional courts, as the terms are positive: but under his amendment, others might be substituted for those now in existence, if the public good should appear to require the change.

Mr. BANKS, of Mifflin, thought the section as it stands exactly what was required to meet the views of the gentleman from Northampton.

Mr. PORTER repeated the explanation he had before given.

Mr. BELL, of Chester, said he saw the distinction at which the gentleman from Northampton was aiming; but he did not know whether it would be wise or expedient to adopt the amendment. It had been frequently said, that we should not make any changes, unless they were called for by good reasons. No such reasons had been assigned. The clause had hitherto worked well. The courts had gone on well: they had understood their jurisdiction, and executed all that was required of them. Unless he should hear any better reasons than had yet been pointed out, according to the course he had prescribed to himself, not to vote for any change without good reasons, he would be obliged to vote against this motion, unless reasons could be assigned which would enable him to justify himself for a contrary course. If a change were necessary, it might be effected by the mere change of a word—substituting the word "or" for the word "and" in the 5th line. If it were really necessary to invest the Legislature with power to abrogate any of the courts, the gentleman could reach his object by striking out one word, and inserting another.

Mr. Woodward, of Luzerne, had another objection to the proposition. It would interfere with the independence of the judiciary, which he hoped they would all be careful to preserve. There was great propriety in the establishment of the courts by constitutional provision, so that the Legislature could not reach them. He knew of no practical inconvenience which could be shewn to have resulted from the Constitution as it now stands, and no sufficient reasons had been assigned for the amendment. He also agreed with the gentleman from Chester, that if the amendment were proper, the object could be accomplished by changing a single word.

Mr. Porter said he would be glad to adopt the suggestions of the gentlemen, and if they would pledge themselves to vote for the amendment in its modified form, he would so modify it. He would not consent to tie up the Legislature by a provision that they should not change the courts. He had not the same fear of the Legislature that some gentlemen had. It was true he had never been a member of that body, and therefore perhaps he was ignorant of what took place there. But he was willing to trust them. All that the Constitution granted to them was the right to exercise the power, when the public interest required its exercise. He had heard complaints of the mode in which the judiciary system worked. Gentlemen had said much on that subject. It was his wish to make it as perfect as any system could be made; and he would be glad to put his proposition in such a shape as would meet the views of gentlemen.

Mr. Bell suggested that the gentleman from Northampton must have forgotten the position in which he entered the Convention. That gentleman had once used the expression that the incessant cry of a party in the State was "change! change! change!"—and he was indisposed to make any change. Now the gentleman had come forward, and had introduced some small change. He had told the Convention that he could not agree to any change without sufficient reasons. And now, when he was solemnly called on to give his reasons for the change he now proposes, the gentleman tells us that it may hereafter be desirable to reduce the courts. "We want no change, and least of all such change as this would give us." He (Mr. B.) was sorry the gentleman had so far forgotten his position. We want no such change. No reasons have been assigned to justify it. He, therefore, felt himself bound to go against the suggestion. He was very glad to hear opposition come from his friend from Luzerne, (Mr. Woodward) on the ground of the interference of the clause with the independence of the judiciary. He was glad to hear that the gentleman from Luzerne had such a profound respect for its independence.

Mr. Porter said that in reference to the Daily Chronicle, he found that he had not been quoted correctly. His language, so long ago as the 9th of May last, was—"the unceasing cry of 'change! change! change!' for mere change sake." He would be glad to find the gentleman from Chester acting with him on this question, although he was aware that gentleman could find a much more able ally in the gentleman from Luzerne. He (Mr. P.) was still as much opposed to "change for mere change sake." He knew that the British Parliament are laboring in a course directly opposite to that we are pursuing.

He would be sorry to do any thing which could unsettle judicial decisions, but he thought the system might be simplified without doing any thing of this kind.

Now he wanted to know if you abolish your associate judges, and organize your courts as has been proposed, by some gentlemen here—and he believed the gentleman from Chester was as much in favor of that as any gentleman, by the substitution of legal characters for those judges,—in that case, might it not be proper to call your courts by some other name than that of quarter sessions? How did it get that name originally? Because it was held by justices of the peace in England, as in the Commonwealth of Pennsylvania, until the adoption of the Constitution. It made a radical change in the system, by associating two associate judges with a law character. In other words, giving the duties of the justices of the peace into the hands of these three judges, and they exercised the functions of judges of the court of common pleas, quarter sessions, orphans' court, and register's court.

Now it may be found necessary to substitute for this long farrago of names, the names of judges of the county court, in whom all this jurisdiction shall be vested. He supposed that his object might be as well attained by substituting the word "or" for "and,' and he believed he should vary his amendment accordingly. He had no wish to undermine the independence of the judiciary, but he insisted that the Legislature must retain the power to repeal the laws establishing any court they deemed necessary. Now the distinction between the amendment and the existing Constitution will be, that if, in practice, it should be found necessary to vest a part of the jurisdiction of the present courts in other courts, still the courts must continue, although their jurisdiction is transferred, because the Constitution provides that there shall be such courts. He did not subscribe to the doctrine, that the Legislature had not the power to repeal a law establishing a court, if it is found not to work well in practice, or not to be necessary. That question was solemnly settled in the Congress of the United States, when the midnight judiciary bill was repealed. He trusted that doctrine would be asserted in this Commonwealth; and if it was, he did not believe that in this peaceable, law loving State of ours, there would ever be found two set of men claiming seats as judges of any court which might be established. He was not afraid to trust this power in the hands of the Legislature of Pennsylvania, because he did not believe that the House of Representatives, the Senate, and the Governor, would ever be found combining to do such an act of injustice as some gentlemen seemed to apprehend they might. He believed such power should be left with the Legislature, so that the skeleton of a court might not be left when the substance, the jurisdiction, was taken away.

He then varied his motion, by moving to substitute the word "or" in the section, for the word "and."

Mr. Hopkinson said it seemed to him that this amendment, proposed by the gentleman from Northampton, involved more serious consequences than were apprehended by him. He thought, after this Convention was assembled, perhaps in June last, a question was made in favor of an express declaration, that this Constitution should consist of three parts: the Legislative, the Executive, and the Judicial, which should forever

be kept separate and distinct; and the amendment to that effect was not adopted, because, as he understood it, that they were thus separate and distinct in the existing Constitution. He understood the reading of this Constitution proved that this was so, and that this government was intended to consist of three separate and independent departments, the Legislative, the Executive, and the Judicial departments, and that these were intended, by the fundamental law of the State, to be independent of each other, and independent of legislative action. Now, is it not most evident that the amendment will place one department, and that the most important departmant of your government, entirely at the will of the Legislature.

If the judiciary department is placed in this relation to the legislative, what security is there for its continuance? If these courts are to exist at the mere will of the Legislature, their jurisdiction to be taken away, and the courts abolished at pleasure, how will the judiciary be an independent department? He would rather see any other department placed in this position—it is the destruction, not only of the independence, but of the existence, of that department. It is in vain to talk about a government of laws, if these tribunals, who execute the laws, shall be at the will and pleasure of the law makers. Then you combine the legislative and judicial departments, and make the judicial the mere footstool of the legislative department. In the second article of the Constitution it is said that the supreme executive power shall be vested in a Governor. Just as well might you say, or such other person as the Legislature shall direct. If you permit temporary acts of the Legislature to change your fundamental law in this way, you have your Constitution one thing to-day, and another thing to-morrow, and in fact you have no Constitution at all. He was satisfied that this amendment which was making the existence of the supreme court dependent upon the Legislature, was to blot from your Constitution altogether the principle that the government is to consist of three separate and independent departments.

Mr. Darlington desired to present a few views to the consideration of the committee, which had not yet been brought to its notice. We are all aware that one of the main and leading questions to be settled in relation to the judiciary is the tenure of office. Some may be in favor of the term for good behaviour, but others we know, from all that we have heard, are in favor of a term of years. Well, suppose we adopt either one or the other—suppose we adopt the report of the committee fixing it at seven years, or say it shall be during good behaviour, what does either amount to, if the amendment succeeds putting it in the power of the Legislature to abolish all the courts, and turn out of office every judge, whether he is appointed for seven or for ten years, or during good behaviour, and substituting therefor any court they choose.

The Legislature may abolish a law establishing these courts whenever they please, and enact one to continue for one, or three, or five years, or any other time that suits them, and direct it to be carried into effect. This would, in fact, be abolishing the Constitutional provision in regard to the tenure of office entirely, and it seemed to him to be wholly inadmissible on this ground.

Mr. PORTER's amendment was then rejected without a division.

The committee then took up the report of the committee on the judiciary article; that it is inexpedient to make any amendment in the following section:

"SECTION 2. The judges of the supreme court and of the several courts of common pleas, shall hold their offices during good behaviour. But for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor may remove any of them, on the address of two-thirds of each branch of the Legislature. The judges of the supreme court, and the presidents of the several courts of common pleas, shall, at stated times, receive, for their services, an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit under this Commonwealth."

Mr. WOODWARD moved to amend the report of the committee, by substituting for the above section, the section reported by the minority of the committee on the judiciary article, modified so as to read as follows:

"The Judges of the Supreme Court shall hold their offices respectively for the term of ten years, but may be re-appointed. The President Judges of the several courts of Common Pleas, and the Judges of the several District Courts, and such Courts as now are, or hereafter may be, established by law, shall hold their offices for the term of seven years, but may be re-appointed. The associate judges of the several counties shall hold their offices for the term of five years, but may be re-appointed. For any reasonable cause, which shall not be sufficient ground of impeachment, the Governor may remove any of the said judges on the address of two-thirds of each branch of the Legislature. The said judges shall, at stated times, receive, for their services, adequate salaries to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees, travelling expenses, per diem allowances, or perquisites of office, nor hold any other office of profit under this Commonwealth: *Provided*, That after the ratification and adoption of this Constitution, the Governor shall, by and with the advice and consent of the Senate, re-appoint one of the then existing judges of the supreme court for the term of two years; one of them for term of four years; one of them for the term of six years; one of them for the term of eight years; and one of them for the term of ten years; and whenever any vacancy occurs on the bench of the supreme court by death, resignation or removal, of any judge thereof, the Governor shall, in the manner aforesaid, fill such vacancy by the appointment of a Judge for the unexpired term of the judges so deceased, resigning, or removed."

Mr. WOODWARD explained why the motion was moved in this modified form. The first part, in relation to the mode of appointment, was omitted, because provision had already been made by an amendment adopted by the committee, as to the manner in which judges were to be appointed; therefore, it was unnecessary to retain this part of the section. And the word "five" for the word "three," extending the time of the associate judges to five years, was inserted in consequence of a subsequent opinion of the minority on the judiciary article.

Mr. Hopkinson, of Philadelphia city, then rose and addressed the committee, to the following effect:

Mr. Chairman: The importance of the subject of this debate is undeniable. The construction of the judicial department of the government, so as to secure for it the requisite learning, integrity and independence, is essential, not only for the just administration of the laws which may be enacted, but of the Constitution itself. The judiciary is the great regulating power of the government; it alone has the ability to keep every other power in its place, and preserve the harmonious action of the whole. It is truly unfortunate that on such a subject the committee have not been able to agree on their report; and I deem it a misfortune for myself to differ with the respectable and learned gentleman who compose the minority of the committee.

It has been repeatedly said on this floor that all discussion and argument of this question is useless, and might be dispensed with; that the votes are counted and the decision settled; that the judges are doomed, and no effort to save them can avail. I will not believe it; I have too much respect for the members of this body to believe that, before the argument has been opened, before the question has even been presented to them, they have decided it. But if it be so, this does not alter my duty, nor will it deter me from the performance of it. The conquerors may triumph and exult here, in the destruction of the judiciary, but the time will assuredly come when they will deplore their victory even more than we do who have endeavored to prevent it. I ask but for a sober and dispassionate consideration of this great question; a quiet and candid hearing—I shall then submissively abide the issue. My personal interest in the result is as inconsiderable as that of any man who hears me. The Constitution, even thus mutilated, will endure for the small residue of my life, and I shall neither see nor feel the evil consequences of the injuries you may inflict upon it. I do not forget, sir, that eulogiums on the Constitution which have been delivered in this hall, have been sometimes sharply rebuked, and sometimes treated with levity and ridicule; but I may be permitted to say, and no man will be bold enough to deny it, that faulty and dispised as it now seems in every department, it redeemed the Commonwealth from many calamities; that it found us depressed and desponding; divided and distracted; industry and enterprize at a stand, and ruin in our view. All this is changed to universal, unexampled prosperity and happiness, to a perfect security in the enjoyment of every right and blessing that a free and rational people should expect or desire. If we owe this change, even in a considerable degree, to the Constitution, with which it began, and under which it has continued to increase, let us not approach it with a hostile spirit, or touch it with a rash hand. Before you remove its fundamental principles, be assured, beyond all reasonable doubt, that they are seriously defective, and that your remedies will be efficacious to improve them. Let us not fix our eyes on some present, personal, or party object to be accomplished or served; some temporary or local cause of complaint, which may be removed by safer means than a mutilation of the body. He is not the best surgeon, who uses the knife most fearlessly, but who knows when to use it. The little passions and interests of the day come and depart like passing clouds; I have seen too many successions of

them, to wonder at the importance that was given to them ; but the prosperity and happiness of a great people depend upon no such matters; they stand on the everlasting foundations of intelligence and truth. Here let us build, and disregard all paltry party politics and interests, which are changing every day.

Two reports are before you, one from the majority, the other from the minority of the committee. The first recommends, that the fourth and tenth sections of this article (the *fifth* of the Constitution) shall be expunged. The fourth, because it was temporary, has performed its office, and no longer has any operation. The tenth gives the appointment of the justices of the peace to the Governor, and makes the tenure of their offices "during good behaviour." Instead of this, it is proposed, that the justices shall be elected by the people, and hold their offices for a term of five years. They are to be commissioned by the Governor, and to be removed by him for misbehaviour, a conviction of any crime, or on the address of the Senate ; and they are to give security for the faithful discharge of their duties. As to the judges of the supreme court, and of the courts of common pleas, they are left as they are in the Constitution, to hold their offices during good behaviour, removeable by impeachment, or on the address of two-thirds of each branch of the Legislature. The report of the minority, concurs with that of the majority, as to the mode of appointing justices of the peace, and the tenure of their offices, but ordains, instead of the second section, as it now stands, of the article, that the judges of the supreme court shall hold their offices for ten years ; the presidents of the courts of common pleas, and judges of the district courts for seven years, and the associate judges of the common pleas for three years. There is also, a provision for vacating the seats of three existing judges. Three plans or propositions are now submitted to the Convention. 1. The constitution as it is. 2. The report of the majorty of the committee. 3. The report of the minority. Here then you are to choose ! Heaven grant that your choice may be a wise one.

I cannot but repeat my regret that this committee, constituted as it was, with the exception of one respectable member from Chester, of members of the law—members of a profession who ought best to understand this subject, both in theory and practice, and have a peculiar interest in it, could not come to a satisfactory agreement respecting it. It was very desirable that such a committee should have presented to the Convention, a report in which they all united. It will not be doubted, that every member of the committee had acted, on his deliberate and conscientious opinion, and it is the right and duty of the Convention to decide between them.

Before I proceed to the discussion of the great principles upon which the committee have divided, I beg your permission to consume a few minutes of your time, on a matter which may be considered rather as having a personal application to the majority of the committee. It has been suggested more than once, on the floor of this House, and out of it, that by consenting to give the justices of the peace to the election of the people, and by taking from them their tenure of good behaviour, we have abandoned the principle on which we defend that tenure for the judges of the superior courts. This is a great mistake, and a brief ex-

planation will prove it to be so. If we have done so; if a satisfactory argument can be raised from these premises to bring us to that conclusion, we must admit that we have been blind or insane, for most assuredly we had no such intention, nor did we anticipate any such consequence. When the circumstances under which this report was made, are understood; when the object which was hoped to be obtained by the concession, is explained, it will be acknowledged that no principle was abandoned, and that the majority, if that object cannot be had, are no longer bound by the concession, but are at full and free liberty to recall it, and return to the Constitution as it stands for the appointment of the justices, and the tenure of their offices. I refer to the gentlemen of the minority of the committee; I confidently appeal to their candour to say, whether this change in the Constitution was not agreed to, by the majority, as a concession, not as their opinion on the abstrsct question; whether it was not an attempt at a compromise, not a wish to effect any change in the Constitution. We found nearly one half of the committee fixed in the belief that the tenure of all the judges and justices should be changed from good behaviour to a term for years; that such was the will and wishes of the people, and such the intention of a majority of the Convention. Could we ask, could we expect, that these gentlemen, or those in this body, who hold the same opinions, would give up the whole ground and disappoint, as they believed, the people in a darling object? We understood that the election of the justices was most especially the wish of the people, and we hoped that by yielding that point, we might secure the tenure, for the higher, and more important courts. It was offered as a compromise, and although it was not accepted by the minority of the committee as appears by their report, and who have throughout acted with entire good faith and candour in all our consultations, we did nevertheless hope, that it might be acceptable to a majority of the Convention; at least, that the attempt was worth making. Should it fail, as it probably will, we shall only be thrown back upon our ground, and be at liberty to vote for the Constitution, as it is, both in relation to the justices and judges. How does this differ from the offers of compromise made daily in other transactions? Neither party can expect to have all; each must give something he thinks he has a right to, in order to gain something he thinks of more importance. To ask for all he claims under the pretence or name of a compomise, would be to insult his adversary. But the offer is by no means, an admission that he has no right to that which he offers, nor an abandonment of the right, if the offer should be rejected. I am possessed of a fine and flourishing farm, of rich meadows, and fertile fields, of a comfortable mansion that has afforded me every convenience for many years, of extensive barns and granaries. I have no doubt of my right to all of them; but a stranger comes with or without right, and claims the whole; would dispossess me of my living. I deny his right, I believe in my own; but I have got into trouble; he has power, I may suffer much, I may even lose all, and to prevent this hazard, to secure that which is most essential to me, I offer to my adversary, a few acres of the least value. Will any one say that by this, I abandon my right the to rest, because I hold all under the same title? Do I even admit that I have not a right to that which I thus offer to part with? and if the compromise is refused, do I not return, without injury to my first title, and all the rights I enjoyed before. Thus

do I now stand before this Convention, if our compromise is not accepted by the Convention. If you will not give the price, the consideration we demand for the concession we are willing to make, do not expect to take the concession without it. I say now again to the Convention, save me the jugdes of the supreme court, and of the courts of common pleas, let them continue to hold their offices, on their present tenure, and so far as I am concerned, you shall give the election of the justices to the people, and limit their commissions to a term of years, not because, in my judgment, this is wise or politic, but because I must make the best of the circumstances in which I am placed, I must relieve the judiciary from the pressure that is upon it, as far as I can. The majority of the committee desire to stand fairly understood before the Convention, and before the country, and for this purpose, this explanation was proper and necessary. Yet if we have been guilty of the folly imputed to us, it should have no influence on the question before the Convention; that must be decided by other considerations and principles. Let us bear the consequesnces of our fault, but it should not be visited on the judges or the justices.

But this part of the case has a range beyond the justification of the report of the committee, and it may be interesting to the Convention to inquire, whether the Constitution puts the judges and the justices on the same footing, except as to the tenure of their offices? Whether they are so identified in the Constitution, that you cannot change the tenure of the justices, without violating the principle which protects the judge? A recurrence to the Constitution will at once convince us that this is not the case; and that the independence of the judges, constitutionally considered, may remain, although the tenure of the justices should be reduced. Judges and justices are not identified or classed together, in the Constitution; they are separated in many important particulars. Are the justices a part of the judiciary? In one sense they are so, and a very important part of it—they decide a vast number of cases, and a great amount of property. The poorer classes of our citizens, are deeply affected by the judgments of these tribunals. A delegate from the county of Philadelphia, suggested that it would probably be better if their jurisdiction were confined to criminal cases; that they should be, as in England, mere conservators of the peace, and that originally, it was so intended in this province. I do not know how this may have been; but I am disposed to prefer it as it is. A prompt and convenient tribunal for the little disputes of our citizens is very necessary, and the justice of the neighborhood seems to be as good as any. There is no doubt that the Constitution has been abused in the appointment of justices. "A *competent*" number was to be appointed, competent for the wants and business of the people, and these commissions were not intended to be used as instruments of executive patronage, as a sort of small coin, to pay small partisans in the war of elections. Who expected to see hundreds of them issued in a few weeks, and by a Governor just going out of office? Some remedy should be applied to this abuse, and the most natural and safe one seems to be, to limit their number.

Whilst, however, I admit that the justices of the peace, are a part of the judicial power of the Commonwealth, I contend, that they are not placed in the Constitution on the same footing with the judges; they do

not stand together on the same platform; they are not regulated by the same principles, and you may safely, or without any violation of principle, or any constitutional incongruity, alter the tenure of the one, and leave the other untouched.

I will not detain you by any commentaries upon the points of difference, but be satisfied with stating them. The justices then differ from the judges, in the estimation of the Constitution in these particulars. 1. Their number is not limited. 2. Their jurisdiction is not defined, but left to the Legislature to make it more or less at their pleasure, and it has, accordingly, been greatly extended, both as to the amount or value of the controversy and the subjects of it. 3. The justices have no salaries, but depend entirely on their fees, for their compensation; whereas the compensation of the judges is to be fixed by law, and cannot be diminished during their continuance in office, and they are prohibited from receiving any fees or perquisites. This is a most important difference in their tenures, particularly in relation to the question of independence, which is secured in a much higher degree for the judges, than the justices. 4. The judges cannot hold any other office of profit under the Commonwealth; but this restriction is not extended to the justices; nor can a judge be a member of Congress, or hold any office of profit or trust, under the United States. The justices are not subject to this disability, which also has a direct application to the question of independence. 5. Justices are removable by a *majority* of each branch of the Legislature, but two thirds are required to remove a judge—a higher independence is here also given to the judge. And finally—6. No appeal is allowed from the judgment of a justice, in many cases which come within their jurisdiction. Is there not abundant evidence here, to show that the Constitution did not intend to place the independence of the justices of the peace, on the same ground—or to guard it with the same care, as that of the judges of the courts, and of course that this committee, and any and every member of this Convention, may, without any inconsistency, without the abandonment of the great principle of judicial independence, consent to limit the commission of a justice of the peace, to a term of years, while he adheres inflexibly to the tenure of good behaviour for the judges? It seems to me, to be impossible to consider these justices, spread over the Commonwealth without stint of number, or place, at the pleasure of the *Executive;* depending upon the Legislature for their *power* and *emoluments*, and upon constables for their *popularity* and *business*, to be a part of the regular, permanent, independent judiciary of the State. They, indeed, depend upon the Legislature for their being, who having them wholly under their control, as to jurisdiction and emolument, may legislate them out of their existence.

I have said, that they are not within the prohibition of the eighth section of the second article of the Constitution, forbidding judges to be members of Congress, or to hold any office under the United States. In the first place, we know, that they have been and are elected members of Congress, as well as of the State Assembly, without forfeiting their commissions. But I am corroborated, if it be needed, in this opinion, by the decision of our supreme court, pronounced after full argument and with great deliberation. The case is reported fully in the third volume of Judge Yeates' Reports, *p.* 300. As I have referred you to the

volume where the case is reported, I will be very brief in my statement of it. It was a motion for an information in nature of a *quo warranto* against Alexander J. Dallas, who then being the district attorney of the United States, also held the office of recorder of the city of Philadelphia. The recorder is the law judge, or officer of the mayor's court of the city. It was alleged, in support of the motion, that the recorder was a judge, and that as such, it could not be held by a person holding at the same time an office of trust and profit under the United States. It was agreed, that if there were a *fair doubt* on the question, the court should grant the information, after which the case would be again argued. But it seems, the court had no doubt, and denied the information. The opinion delivered, is long and elaborate, and the decision was, that the recorder of the mayor's court is certainly a judicial officer—and as such, as commissioned during good behaviour, and exercises judicial functions, but, that nevertheless, he is not a *judge* within the meaning of the Constitution; that the Convention has expressly denominated certain judicial officers by the appropriate name of *judges*, namely, the judges of the supreme court—of the common pleas, and *no others;* that justices of the peace are part of the *judicial power*, but are not included under the name of *judges*.

Here (Mr. H.) yielded the floor.

On motion of Mr. INGERSOLL, the committee rose, reported progress, and obtained leave to sit again; and,

The Convention then adjourned.

SATURDAY, OCTOBER 28, 1838.

Mr. FULLER presented a memorial from citizens of Fayette county on the subject of amendments to the Constitution, which was laid on the table.

Mr. WOODWARD offered the following resolution :

Resolved, That the librarian of the State library be requested to keep the library open and lighted each evening until nine o'clock."

The resolution was then read a second time and adopted.

Mr. CUNNINGHAM, of Mercer, moved, that the Convention will to day dispense with the daily recess, and that when it adjourns, it will adjourn to meet on Monday morning at 9 o'clock.

Mr. FULLER, of Fayette, asked for the yeas and nays, and they were ordered.

The question was then taken and decided in the affirmative, as follows, viz.

YEAS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Bedford, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown, of Philadelphia, Butler, Carey, Chambers,

Chandler, of Chester, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Coates, Cochran, Cope, Crain, Cunningham, Curll, Darlington, Denny, Dickey, Donagan, Donnell, Dunlop, Farrelly, Forward, Foulkrod, Fry, Gilmore, Grenell, Hastings, Hays, Helffenstein, Henderson, of Dauphin, Hiester, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Keim, Kennedy, Konigmacher, Lyons, Maclay, Magee, Martin, M'Sherry, Meredith, Merrill, Myers, Overfield, Pollock, Porter, of Northampton, Read, Rogers, Russell, Serrill, Sill, Stevens, Sturdevant, Thomas, Todd, White, Woodward, Sergeant, *President*—74.

Nays—Messrs. Barndollar, Cleavinger, Craig, Crawford, Crum, Darrah, Dickerson, Dillinger, Earle, Fuller, Gearhart, Harris, Hayhurst, Henderson of Allegheny, High, Kerr, Krebs, Mann, M'Call, Merkel, Miller, Montgomery, Pennypacker, Purviance, Saeger, Scheetz, Scott, Sellers, Seltzer, Shellito, Smith, Smyth, Taggart—33.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'Sherey in the chair, on the report of the committee, to whom was referred the fifth article of the Constitution.

The question being on the motion of Mr. Woodward to amend the said report, by inserting the following to be called section second, viz:

"The judges of the supreme court shall hold their offices respectively for the term of ten years, but may be re-appointed. The president judges of the several courts of common pleas and the judges of the several district courts, and of such other courts as now are or hereafter may be established by law, shall hold their offices for the term of seven years, but may be reappointed. The associate judges of the several counties shall hold their offices for the term of five years, but may be reappointed. For any reasonable cause which shall not be sufficient ground of impeachment, the Governor may remove any of the said judges on the address of two-thirds of each branch of the Legislature. The said judges shall at stated times receive for their services adequate salaries to be fixed by law, which shall not be diminished during their continuance in office, but they shall receive no fees, travelling expenses, per diem allowances or perquisites of office, nor hold any other office or profit under this Commonwealth: *Provided*, That after the ratification and adoption of this Constitution, the Governor shall, by and with the advice and consent of the Senate, reappoint one of the then existing judges of the supreme court for the term of two years, one of them for the term of four years, one of them for the term of six years, one of them for the term or eight years, and one of them for the term of ten years. And whenever any vacancy occurs on the bench of the supreme court by the death, resignation or removal of any judge thereof, the Governor shall, in the manner aforesaid, fill such vacancy by the appointment of a judge for the unexpired term of the judges so deceased, resigning or removed."

Mr. Hopkinson resumed his remarks.

Allow me Mr. Chairman, to refer to one other authority, to show to you, that the independence of the judiciary, in relation to the tenure of the offices of the judges, is by no means identified with that of the justices of the peace. Their character and positions are very different. In the Constitution of Massachusetts, part 1, section 29, it is declared to be "essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation

of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent, as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well, and that they should have honorable salaries ascertained and established by standing laws." In chapter 3d, article 1st, it is declared, that "all *judicial officers* duly appointed, shall hold their offices during good behaviour, excepting such concerning whom there is a different provision made in this Constitution." In the third article of the same chapter, it is provided, that "in order that the people may not suffer from the long continuance in place of any justice of the the peace, who shall fail of discharging the impotrant duties of his office with ability and fidelity, all commissions of justices of the peace shall expire and become void in the term of seven years from their respective dates." I leave this part of the case here, and proceed to the more important subject of our consideration.

Whenever a real, effectual judicial independence has been sought for, it has been found in the tenure for good behaviour and fixed salaries, that the judges may not be at the mercy of the Legislature, or any other branch of the government, either for their offices, or their compensation. There was no such thing as an independent judiciary in England, until it was thus protected. The history of this independence in England is recent and brief. The gentleman on my right, (Mr. Ingersoll) has truly said, indeed it has become an historical axiom, that English liberty is dated from the revolution of 1688, but I aver, that neither that, or any other revolution could secure the liberties of a people, unless their laws were administered with true impartiality and unflinching fidelity, without fear of, or favour to, any human power; and for this administration, you must depend upon your courts; and to be assured of it from them, you must make your judges independent of every power and influence, that might press too hard upon them, and put their judgment and integrity to an unreasonable and unnecessary trial. How is it, but by the increased security and independence of the courts of justice, that English liberty is more firm and safe now, than before the revolution? The Executive authority is under no more restraint than before, except in its power over the judiciary; the Legislative authority is the same; but the judges have been made more independent of both the other branches, by giving them certain and established salaries, and making their commissions continue during their good behaviour. By a statute passed in the 13th year of William III, the tenure of the judges was changed from the pleasure of the king to good behaviour. But this tenure was not complete, until it was enacted in the 1st year of George the III, that the demise of the crown should not vacate the commission. The king himself recommended this law, declaring, that he "looked upon the independence and uprightness of the judges, as essential to the impartial administration of justice; as one of the best securities of the rights and liberties of his subjects, and as most conducive to the honor of the crown." And how did he propose to obtain for the judges this essential independence and uprightness? By established salaries, and the tenure of good behaviour. And he did thus obtain them; and the justice of an English court, its impartial administration of the laws of the land, have, from that day,

been the proudest boast, and the most valuable inheritance of an Englishman. We look with respect to the judgments of those courts, not from any authority they have over us, but for their intrinsic learning, ability and justice.

Why do the people of England believe and feel that their freedom is more secure, their courts more upright and safe than they were one hundred and fifty years ago? It is because they look back to the times when the judges held their commissions at the will of the king. They remember the days and the decisions of a Jeffreys, who, however honestly he may have administered justice between private parties, whenever the king had an interest or a feeling in the case, where life or liberty was to be prostrated before the passions or power of the monarch, was ready to lend himself to do the royal will at any sacrifice of his own integrity, or the laws of the land. The change in the judicial tenure, so essential to liberty, came from the people and for the people. It began in the parliament in 1701, and was conceded by a king seeking to confirm his title to the throne by popular acts; it was enlarged in the first year of George III, who began his reign with a popularity, and a desire to make himself popular, which have a few examples in English history.

We see then, that these "life offices," as they are reproachfully called, are not an aristocratical invention as has been asserted. If they are odious to the people, and so we have been assured, it must be for some other reason; they must have been made so by other means. They are strictly and truly, historically and practically founded on a democratic, popular principle. Their *object* and *effect* is to secure to the people a fearless and impartial administration of the laws; to protect the property and person of every citizen, from the power, usurpation, caprice and oppression of every department of the government, of the Legislature, as well as the Executive; from the hostility and cupidity of every other citizen, who, from his wealth, his connections, his popularity or party influence may have the power to injure him; and finally, in relation to the government itself, to keep each constitutional power and authority in its right place, directing and preserving a proper, safe and uniform action in the whole. You have granted to your Legislature, certain, but not unlimited powers, they are guarded by wholesome restrictions; so to your Executive, but all these guards and restrictions are vain and useless, a mere mockery and delusion, unless you have a third power, *independent of both the others*, to hold them within their prescribed limits. Without this, your Legislature would be as omnipotent as a British parliament, your Governor as unshacled as a king. Will you answer that the check will be found in the people, at their elections? This is a plausible and flattering thing, but what is it in practice? What is that remedy worth to the injured, oppressed and ruined individual, smitten by the lawless hand of power? Alas! it will come too late; it may recognise and condemn the wrong, but it cannot save the victim; it may punish the offender, but cannot recall the violence, or obliterate its consequences. The people can act upon one branch of the Legislature but once a year; upon the other but once in four years, and upon the Governor but once in three years. What enormities may be perpetrated in these periods? Your Constitution may be violated, your

citizens oppressed, all the fancied securities of your fundamental laws, of your constitutional restraints, broken down by unauthorized acts of Legislation, for the Legislature is the most irresponsible, encroaching ambitious branch of your government. The elections give no protection against these wrongs—no redress for them. You must have a power to *prevent the mischief*, to arrest it on first movement, and to undue what has been wrongfully done, This practical, efficient conservative power can be found only in an independent judiciary; for this it was created. The Constitution is its pedestal, there it takes its stand; to the people on one side, it says, respect and obey your constituted authorities, your laws, your appointed agents, submit to the authority which comes from yourselves, to the powers you have created for your own benefit. To these authorities it says, look to your commissions—to the great charter under and by which you hold your offices, mark and observe the limits that are traced round you. Can the judiciary do this, can it perform the vital functions which belong to it, can it exercise this controlling, supervisory power, if it be not independent of the parties to be controlled? It must have no dependence upon them, it must have no community of interest or action with them, it must move in its own orb, liable to no influences from them; it must have no masters, but the Constitution and the law, no guide but duty, no fear but of its own misbehaviour. With three securities, a government must be essentially free, and without them, and every of them, it cannot be so, whatever may be its name and form. 1. With laws made by the representatives of the people. 2. With an able, upright and independent judiciary to maintain and execute the laws. 3. With an habeas corpus act. But the law will be an uncertain and imperfect protection, without a power to execute it against all, and every other power in the State; and the habeas corpus is no safety against power, without judges who may, with safety to themselves, with calm and free minds, undisturbed by hopes or fears, maintain the liberties of the meanest citizen against the oppression of the highest, nay of the government itself.

Allow me, sir, to call your attention to the history of this tenure of good behaviour in Pennsylvania. This "*life office*" as it is falsely denominated; this aristocratical, odious feature in our Constitution, where it was put by as pure and enlightened patriots as ever lived, was in truth, the *first born* and the *best born* offspring of the *democracy of the Commonwealth*, of a democracy which was honest and patriotic—although the proprietary government was highly aristocratic, the people were ardent and true lovers of liberty, and immediately after the organization of the government, introduced into it, on their own motion, this preservative principle of their liberties. Is this beautiful and noble child to be strangled by men, calling themselves Pennsylvania democrats, *the* democrats of Pennsylvania? We see here the difference between *democracy* and a *democratic party*. The first is a principle, good or bad, as it is rational or wild, regulated or licentious. The other, like all parties, is selfish, and reckless, pursuing its own objects, and striving to uphold its power, and preserve its interests.

But, there is another fact, respecting this tenure which is peculiarly interesting to Pennsylvanians, and should recommend it to the favor of

the Pennsylvania Convention. It was, as to every practical and beneficial use, a *Pennsylvania invention.* It was devised by our ancestors, and if not strictly new, it was original with them, to secure their liberties against the dangers and power of a most aristocratical form of government. They know their only refuge was in the courts, and that no refuge could be found there, unless their judges were independent of the government, and that they could not be independent without established salaries, and a tenure of good behaviour. They did not owe, as some have supposed, this principle of a free government to the mother country. They preceded her in it. We have seen that it was introduced into England in the 13th of the reign of William III, which was the year 1701; but we find it in Pennsylvania in 1683, that is, five years before the revolution, and eighteen years before the law of England.*

Shall we pay no regard to these examples drawn from our own country, and from that country to whom we owe so many of our free opinions and institutions. Have we no reverence for the lessons of our ancestors? Will we learn nothing, know nothing, believe nothing from their precepts, their example, their experience? Has it, indeed been truly said, to the shame of our nature, that "human experience, like the stern lights of a ship, illumins only the path which we have passed over"—and casts no lights before us? Will you be blind; will you turn a deaf ear to the voice of your own experience? What does it teach, what does it proclaim in a clear and loud voice, against which doubt or denial will not dare to raise a sound? I ask you, who are thirsting for changes, who would lay hands of violence on your Constitution, lop off its limbs, and patch it up with some miserable, limping, half-formed substitutes? I ask you what security in every valuable right; what benefit, moral, personal, or political, that human institutions can bestow, have we not enjoyed under this Constitution, *just as it is.* I know this view

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* I am aware that Judge Story, in his excellent Commentaries on the Constitution, says, that in the time of Lord Coke, the barons of the exchequer, (not the other judges,) held their offices, during their good behaviour, but he adds, that they so held them, at the pleasure of the king, who might *prescribe what tenure* of office he might choose, until the revolution of 1688. This learned commentator, also informs us, that the judges of the old parliaments of France were, before the revolution, appointed by the crown, but they hold their offices for life. But as these judges, in common with every subject, held their personal liberty at the pleasure of the king, who might, by a word, send them into banishment, or the bastile, their independence was merely nominal, and hardly that, whatever form of words may have been used in their appointment.

The following extract from "Whitelocke's Memorials," p. 16, will further show how entirely dependent the barons of the exchequer were upon the crown for their *offices,* whatever their *commissions* might be. The independence of the *judge* was altogether nominal, and at the pleasure of the king, while the *appointment* professed to be "during good behaviour." If the king could not revoke his patent, or commission, he could destroy it, by forbidding the judge to sit in court, This author speaks of *Sir John Walter,* as "a grave and learned judge," but he had offended the king, who "discharged him of his service, by message, yet he kept his place of chief baron, and would not leave it, but by legal proceeding, because his patent of it, was *quam diu se bene gesseret,* and it must be tried, whether he did *bene se gesserit* or not. *He never sat in court, after the king forbid him;* yet held his place till he died."

has been often set before you, for its truth, and force justify repetition; and I know it has been sometimes received with a sneer, but it was from the rash and thoughtless. If the people of England resorted to this judicial tenure, when they obtained their liberty, as the best means of preserving it; if our ancesters divised it to secure their liberty and laws, shall we account ourselves wise to disregard such examples, to meet and to satisfy some local' and temporary discontents, or to gratify some restless and ambitious men?

Let me refer you to an example of another character, let me show you a picture of the condition of the laws and liberty, when judges are not independent of the appointing power. *Oliver Cromwell*, laid an extraordinary tax upon the city of London. One *Coney*, an enthusiastic fanatic, who had been a devoted and useful friend to Cromwell, refused to pay this tax, and declaimed against it, as an imposition against the law, and the property of the subject. Cromwell endeavoured to flatter and persuade him out of his opposition, but in vain. He then addressed him in terms of reproach, and contempt, and *committed him to prison*. Coney brought a habeas corpus, before the court of king's bench. *Maynard*, his lawyer, demanded his liberty, on the ground both of the illegality of the tax imposed, and of the commitment of his client. The judges could not maintain or defend either the tax or the commitment, and were about to give their sentence, accordingly, when the protector's attorney (mark the *protector*) asked for delay to answer the objections. How were they answered, and by whom? Not by the attorney to the court, but by Cromwell himself in his own way. Maynard, the lawyer, was committed to the tower, for *presuming to doubt the authority of the protector*. The judges *were sent for* and severely reprimanded for *suffering that license;* when they (the judges,) *with all humility*, mentioned the law of the Magna Charta. Now, observe Cromwell's reply to this humble appeal to the great charter of the law, and liberty of an Englishman. He told them that "their Magna f——" using a word not to be repeated here, "should not control his actions, which he knew were for the safety of the Commonwealth." He asked them, "*who made them judges?* Whether they had any authority to sit there, but what *he gave them?* and if his authority were at an end, they knew well enough what would become of themselves; and therefore *advised* them to be more tender of that which could only preserve them," and so dismissed them with the caution that they should not suffer the lawyers to prate, what it would not become them to hear. The historian (Clarendon) after relating this instructive scene, says: "Thus he (Cromwell) subdued a *spirit that had often been troublesome to the most sovereign power*, and made Westminster Hall, as obedient and subservient to his commands, as any of the rest of his quarters."

Until these troublesome courts were subdued, by the dependence of the judges, the citizens had some protection against oppression and the laws a security against violence. We have here presented to our most serious consideration, a most potent and instructive example and lesson, derived from the experience of a *commonwealth*, especially under the protectin n of a pretended but false saint of democvacy. What do you see? 1. An unequal and illegal tax, violating the law of Magna Charta. 2. A citizen (for it was a commonwealth) imprisoned, without

hearing or warrant, without trial, or judgment, by an arbitrary mandate, for opposing the collection of this tax, not by any force, but by *dissuading* others from paying it. 3. The lawyer, who, by the regular process of the law, and before the proper tribunal, and in accordance with the great law of the land, demanded the liberty of his client, was sent to the tower, by the same arbitrary mandate, because he presumed to assert the rights of the citizen, and maintain the law of the commonwealth. 4. The judges, who had shown that they would render a judgment in favor of the rights and liberty of the citizen, were *sent for*, were ordered to come down from the high seat of justice, to wait upon the protector, and were sharply reprimanded, and informed that their *power and places* depended on their maintaining, not Magna Charta, that was treated with vulgar derision and contempt, but the authority, the will, legal or illegal of a reckless despot. 5. That this despot, having thus, by the dependence of the judges on him for " their power and places," brought them to his feet, having thus subdued the spirit, which had been so troublesome to arbitrary power, had no longer an obstacle to his will and wishes.

Future Governors and Legislatures of Pennsylvania may hereafter have the same contempt for the Constitution, the courts and the judges, although they may show it with more discretion and disguise; but it will be easy for them, without such open violence and indecency, to let the judges know, at the approach of the termination of the periods of their appointments, where and to whom they are to look for a continuance of their offices.

Montesquieu, a favorite authority with republicans, tells us, that when the spirit of extreme democracy prevails, when the people want *to do every thing themselves*, to debate for the senate, to execute for the executive, and *to strip the judges*, the virtue of the republic can no longer subsist.

From such examples and proofs of the consequences of a dependent judiciary, can we wonder that when the revolution of 1688, gave the people of England some assurance of liberty, the independence of the judges were solemnly recognised and secured; and that in Pennsylvania, under its earliest government, it should be the first object attended to by the people. In the royal governments of the other provinces, it was not allowed, but the dependence of the judges on the crown was maintained. This evil formed a prominent article of complaint, as will abundantly appear by a recurrence to the journals of Congress, before the Declaration of Independence, and was the subject of the most urgent remonstrances of the patriots of that day. In the petition of the American Congress to the king, signed by every member, in November 1774, one of the grievances complained of was, that the judges of the courts of common pleas had been made dependent on one part of the Legislature for their salaries, as well as for the duration of their commissions. In a petition (May 2, 1774)of Americans in London, to the house of commons, it is said, that the appointment and removal of judges, at the pleasure of the governor, with salaries payable by the crown, puts the prosperity, liberty and life of the subject, *depending upon judicial integrity*, in his power. What is the language of the Declaration of Independence on this subject, in the charges presented by the Thirteen

Colonies against the king. "He has made the judges dependent on his will for the tenure of their offices, and the amount and payment of their salaries." Here we have the germ and substance of the principle developed and brought into action in our Constitution, that the independence of the judges is to be obtained, 1. By the permanency of the tenure of his office. 2. By the establishment of a fixed salary.

It is no answer to these cases, or to this argument, to say, that they refer to a dependence on a crown, a king; but that here it would be on a governor elected—on a senate—a house of representatives, or, if you please, on the people themselves—still it is dependence—slavery is slavery, whoever may be the master. To preserve the great, the essential principle, there must be no influence, no authority, no fear, favour or pressure, *but of and from the law*, allowed to enter the halls of justice, to reach the high places on which the ministers of the law are seated. The judge should know nothing of the parties, but their *names* on his docket; nothing of the cause, but from the evidence; nothing of the result and its consequences, but the judgment which the LAW pronounces. To his eye, the plaintiff is A B, and the defendant C D; not a rich man and a poor one, not a powerful political leader who can take his hundreds to the polls against a feeble and obscure adversary; not the triumphant, proud giant of a successful party, against an individual of the defeated; not a *democrat* against a *federalist*. Is not the influence of a partisan leader, of the popular printer of a party paper, as dangerous as those who offend them, as reckless of right and justice; as destructive, corrupt and oppressive, as that of the crown in its boldest exercise of a unjust and arbitrary will? Sir, I do not hesitate to say, that the popular influences I have alluded to, are more dangerous, and less responsible, than the power of a king over dependent judges. How seldom, if ever, does this influence interfere with the course of justice between private suitors. It is only when some state prosecution, or some question in which the government has a direct interest, that the king ever knows what is passing in his courts. Cromwell never put his power in the scale between individual citizens; and some of the most corrupt and subservient judges to the interests of the crown, are known to have administered the law ably and honestly in private suits. But in a popular government, in a government of *parties*, of *newspapers* and *printers*, in which so many citizens take a part, and in some way give offence to their adversaries, this popular influence, this party feeling and power enters into every thing and every place. If a controversy is depending, which excites any notice, between two men of different parties and of some importance, though the subject be some private right, do we not see that the feelings and prejudices of party are brought to bear upon it in every practicable way, by the press? By personal communications? And can it be doubted that these influences come into the courts, into the jury box, and are known to the judges? And if these judges, in doing their duty, should excite the resentment of the favorite, perhaps, an important leader, and of the predominant party, would he fail to impart his feelings to his political friends, and will they fail to impart his feelings to his political friends, and will they fail to make the judges feel their resentment if they have the power? I infer, that in a popular government, an inde-

pendent judiciary is *even more necessary to the security of the rights of the citizen, than in a monarchy.*

I pray your patience, sir, and the indulgence of the committee; and I will strengthen my claim to it, by assuring you that it is not my intention to address you again on this subject. I shall say, now, all I have to say about it; and as the chairman of the committee who have made the reports now before the Convention, it may be expected or permitted, that I should present the whole case as fully as I am able. We are contending for an important principle, vital, as we believe, to the rights of the people of Pennsylvania. What has been the history of that principle in these United States? I will begin with Pennsylvania.

The government of William Penn has been highly lauded here as one that was truly democratic; even more it has been said than is now desired; it contains the aboriginal principle, to which our reformers wish now to return. What was this government? Who made it? Not the people; they had not a word to say about it, either in their primary assemblies, nor by their representations. It was the work of William Penn; it was dictated by his voice and will; it was given, *granted* to the people, as a boon by the lord and proprietor of all. He granted, and confirmed to the *freemen*, as they are called, of the province, all the liberties, franchises, and properties they held and enjoyed. So much for its origin, the source of its power. How was this democratic government constituted? Of what was it composed? 1. A governor, that is the grantor, the maker of it. 2. A council elected annually by the people, first consisting of seventy-two members, a very full representation In the next year, it was reduced to eighteen, and then to twelve, for the representation for what is now Pennsylvania, together with the three counties which constitute the state of Delaware, that is, six for those three counties and six for Pennsylvania. 3. A house of assembly elected by the freemen. What were the powers of this house of assembly? Scarcely any. The real effective power of the government was vested in the governor, and the council of twelve. They decided in *the first instance* upon the bills which were to be acted upon, and passed into laws; they had the power of erecting courts of justice; of giving judgment; of impeachment. Not less than two thirds of this council was a quorum; and two thirds of the quorum must concur in any act of the council. They had the right to *propose all laws* to the general assembly; and to *dismiss the assembly when they were done with them.*

This was the democratic, radical government, even more radical than is now asked for, or desired. But farther, this council had the sole power to erect the courts. Having done this, *they named* to the Governor two persons for a judge, a treasurer, &c., and the Governor, *or his deputy*, commissioned one of them, and this was done *annually*. What was this but an aristocratic despotism, in which the people and their rights counted for nothing? What an absolute state of dependence on a few men. Every year, the judges, the treasurer; the law and the public treasure; the rights of the people and their property, were brought to the door of this council hall, to the feet of these councillors, the treasurer and the treasure, to be at their disposal, and the judges to do their

pleasure, or to be turned from their offices, and look elsewhere for their bread. This was intolerable, yet in principle, it is precisely what is now proposed, in a more mitigated degree and form. It was impossible that freemen could be content, under such a government, having no security for the faithful administration of the laws, and of course, having none for the rights they hold under, and by the law. What was the remedy they sought? What was the security they demanded for their liberties? *Precisely* what we are now contending for, an *independent judiciary*. And how did they propose to get an independent judiciary? Not by a tenure for five, seven, or ten years, but *during good behaviour*. This concession was made to the *people;* they asked it the first meeting of their representatives; it was the first object of their consideration and concern. It was demanded and granted, in 1683, about one year after the date of the original frame of government, which provided for the annual appointment of the judges. Should we not cherish this principle with an honest pride, a filial reverence, and not cast it from us, as a weed, unwholesome and poisonous to liberty. The habeas corpus writ was not a more noble and efficient invention for the security of personal liberty, than *this* was for the security of liberty, property and every civil right; for the assurance of the supremacy of the Constitution and the law; for the due and impartial administration of justice between man and man, as well as between the government and a citizen. I have not traced in the subsequent history of the province, the operation of this concession to the independence of the judges. My object is only to show that this tenure of good behaviour, now denounced as odious and aristocratical, did come from the people themselves, and was obtained for them as the best security of their rights and liberties.

When the colonies determined on a final separation from Great Britain, and made their declaration accordingly, Pennsylvania found it necessary to provide for herself a new frame of government. A Convention was called and organized for that purpose, and in the latter end of September, 1776, after a session of little more than two months, a form of government was agreed upon and given to the people. This has been called here, (to give it authority it is presumed,) Dr. Franklin's Constitution. He was the president of the convention. It is certainly true, that the judicial tenure of good behaviour is not found in this frame of government. Judges were appointed for seven years; the legislative power was vested in a house of representatives, and the executive in a president and council. Justices of the peace were elected by the *freeholders* of each city and county, and no justice was allowed to sit in the general Assembly. This Constitution, thus formed on principles that are now deemed to be radically erroneous and defective, was made in the heat and struggle of a revolution, when we were just emerging from a state of colonial dependence, in which we had always lived and lived so long, looking to the parent land for every thing, that we hardly knew what sort of government would be required for a free people, left to their own direction in the management of their affairs, and having their own resources and interests in their own hands. Soon after the termination of the war we began to understand our new situation, and to see and feel the necessity of essential changes in the frame of our government. This Constitution created a body, called "*the council of censors*," who were vested with the power to call a convention, to amend the Constitution, two-

thirds of the whole number concurring. This council was to meet every seventh year. Their first meeting was held in November, 1783, immediately after the termination of the war. A committee was appointed "to report those articles of the Constitution which are materially defective, and absolutely require alteration and amendment, and to report the alterations and amendments." I will refer only to that part of the report which relates to the subject we are considering. It is thus—"that by the said Constitution, the judges of the supreme court are to be commissioned for seven years only, and are removable at any time (for misbehaviour) by the general assembly. Your committee conceive the said Constitution to be, in this respect, materially defective. 1. Not only because the lives and property of the citizens, must, in a great degree, depend upon the judges, but the liberties of the State are evidently connected with their independence. 2. Because if the assembly should pass an unconstitutional law, and the judges have virtue enough to refuse to obey it, the same assembly could instantly remove them. 3. Because at the close of seven years, the seats of the judges must depend on the will of the council; wherefore, the judges will, naturally, be under an undue bias, in favour of those upon whose will their commissions are to depend." The committee recommend—"that the judges of the supreme court, and of the respective courts of common pleas, shall have fixed salaries; shall be appointed and commissioned by the Governor, and shall hold their appointments and salaries during good behaviour." The report of the committee was adopted and recommended to the people by a majority of the council, but as two thirds were required for the call of a convention, it was not done at this time. Afterwards, in 1789, a convention was called, in a manner that I, on a former occasion, explained to the Convention, and the present Constitution was adopted. I have shown that this was the clear and unequivocal will and act of the people of Pennsylvania. Here we find the independence of the judges provided for in the manner recommended by the committee of the council of censors. The single branch of the Legislature was changed for a senate and house of representatives; the Executive power was no longer vested in president and council, and nobody thinks of going back to the Constitution of 1776, for these things. The judiciary alone, the most powerless for evil of all the departments of government, seems to be a peculiar object of the rage for reform, and we are asked to retrogade as to that, to the Constitution of 1776.

By turning to the minutes of the Convention of 1789, we shall see that on the question between a judiciary for a limited term and during good behaviour, which is precisely our question, the vote was eight for the former, and fifty-six for the latter. This is something for us; it is some evidence in favour of the tenure we advocate, for in this fifty-six there were men of both parties, men who were then and are now held in the highest respect as leaders of the democratic party; as the fathers of the democracy of Pennsylvania. This vote was on a preliminary question, and embraced only the judges of the supreme court, and was taken on the 9th of December, 1789. On the 21st of the same month, the draft of the Constitution was reported, extending the same tenure of good behaviour to the judges of the common pleas, and was so finally adopted. An attempt was made to render the judges removeable by a *majority* of both houses, instead of *two-thirds*, which failed, eight only

voting for it. This is something to show that the jurists and statesmen of that day, federalists and democrats, and the people of Pennsylvania, looked for their security, for the faithful administration of the Constitution and the laws, in an independent judiciary, and that that independence was to be found in giving the judges safety and permanency in their places, against any and every power, legislatlve, executive and popular, while they behaved themselves well. Good behaviour the tenure with fixed salaries, and a vote for their removal, either on an impeachment, or by address of two-thirds of both branches.

To weaken the authority derived from the opinions and doings of the great men, and true patriots who made this Constitution, we have been told, that the two youngest men of this Convention know more of the science of government than the whole body of the Convention of 1789. So far as this was intended as a personal compliment to the young gentlemen alluded to, I have no wish to interfere with it. They are probably a little surprised themselves to make this discovery; it is, probably, the first time it has occurred to them. As to one of them, I have been accustomed from his childhood to regard him with feelings of the truest kindness. He has a right by inheritance, as well as on his own account, to my best regard. But I presume this observation was intended as an argument, and as such, it embraces every member of this Convention: as such I meet it, not intending, however, to institute a personal comparison between the members of this and of that Convention. Some of us might feel a little awkward in such an experiment. The argument is founded on the circumstance, that fifty years have elapsed since the Constitution was made; that these have been years of great experience and trials for government. Now if this argument be good as applied to this Constitution, what becomes of that of 1776, for which our reverence has been claimed as the government of Dr. Franklin. We are more than sixty years in advance of it; and what shall we say of the democratic government of William Penn, which is one hundred and sixty years behind us, if time is the only teacher of this science? As to *Bacon* and *Locke*, whose opinions have heretofore had some respect, they are thrown at an immeasurable distance from our youngest members, and Aristotle and Cicero are lost in darkness and ignorance. Their stars, hitherto lights of the world, are no longer visible in the blaze of knowledge emanating from us, and every one of us.

If, indeed, I look to the great events that have passed before us, since the framing of our Constitution, I am lost, not in any conceit of my own superiority, but in admiration of the wisdom, foresight and patriotism of the makers, who have so beautifully and firmly apportioned the powers of the government, as to preserve us *now and forever*, if we *hold to it*, from the wild, merciless and sanguinary tragedies we have witnessed, under the names of *liberty and the people*. True we have lived in an eventful period; in the last fifty years terrible scenes have been enacted; awful lessons have been taught. We have seen a people let loose from all the restraints of law; abandoning the obligations of religion and morality; of every human virtue and kind feeling. We have seen that when thus left to their own impulses and passions, they will darken the firmament with their crimes, and flood the earth with gore. They will slaughter thousands for pastime, and "drink hot blood" as a luxury.

To have liberty, in its true sense, we must have a government of laws, made by the representatives of the people, equal and just to all, had *strong enough* to keep down turbulent and dangerous passions. We have seen lamentable proofs of the necessity of such restraints. But they have been additional, rather than new proofs of this truth. It has been so from the beginning. Similar scenes have been enacted on the theatre of this world, again and again, the same lessons taught and forgotten. They are found in the history of the human race, in the nature of man, from the first murder in Paradise to the crimes of yesterday. These truths, these lessons were as well known, as fully appreciated, by the statesmen and jurists of 1790, as they are now. They were known to the learned and wise of fifty years, of five hundred, of a thousand years ago. They were proclaimed in their writings; they appear in the pages of history. The insurrection of *Massaniello*, was a French revolution of seven days; and remoter times furnish many such examples.

But are the study and knowledge of a free government so new in our country, that we must look for them in the experience of the last few years? Were our ancestors ignorant of them, and may we claim to treat their opinions with disregard or contempt? I pray you, sir, to turn to the essays, the remonstrances, the petitions and speeches of our American patriots antecedent to the revolution, and during it, and answer me whether the principles of a free government. of rational, safe, consistent liberty were not perfectly known to them. They needed not the "bloody instruction" of the French revolution; nor the agitators of reform here or elsewhere, to inform them. I proceed with my evidence in favor of the judicial tenure of good behaviour, drawn from the opinions and acts of our own statesmen and patriots.

The Constitution of the United States was antecedent in point of time to that of Pennsylvania, but is founded on the same principle, so far as they could be applied to a confederated government, and is the same upon the subject we are discussing. The members of that Convention were the most distinguished men drawn from every state of the Union; men who had long enjoyed and eminently deserved the confidence of the people. Many of them had proved their fidelity and ability through the revolutionary contest. Now observe, sir, not even a *proposal was made in that Convention for judges for a limited period.* These assembled patriots and jurists received it as a *political axiom*, established by the uniform practice of one hundred and fifty years in England—settled and confirmed by the sense of the American people, that the tenure of the office of a judge should be "during good behaviour." This Constitution, adopting and establishing this principle, was submitted to the Conventions elected by the people in every state, You know it met with a strong opposition in many of the states, of the large and more powerful states. It had ardent, able, and persevering. enemies, seeking for objections; particularly popular objections, in every article and line. But this tenure of good behaviour, as far as I have been able to discover, *was never made one of the objections.* Certainly this is something; this is much to support us here who are contending for the same thing. Certainly we may say that this should inspire our opponents with some distrust of their own opinions, from whencesoever they

may have derived them. Their source cannot be purer or more worthy of confidence. They should hesitate before they overthrow a great principle thus sustained by the wisdom and experience of so many years, and sanctioned by so many great and good men. Need I hesitate to say that I hold the judgment of the one hundred men who put their names to the Constitutions of the United States and of Pennsylvania, after a full consultation, deliberation, and discussion; a judgment afterwards affirmed by the Conventions of the States after a second examination and deliberation, to have an authority infinitely higher than the thoughtless, tumultuous, uninformed resolutions and votes of a popular party meeting in any city, district, or neighborhood, got up, perhaps, for some party election or object, and deciding without examination or knowledge, excited and misled by the clamorous misrepresentations of designing, selfish, and party politicians? I will endeavor to follow the permanent, unchanging light of the truth, and not these inflamed exhalations, which live but an hour, and deceive and mislead while they do live.

I will proceed with examples drawn from American experience and wisdom. A great majority of the States have adopted the judicial tenure of "good behaviour," and I believe there is not an instance where, after trying it, any State has gone back to a term of years. If we shall now do it, Pennsylvania will give the first example of such a retrograde movement. Not more than six or seven now appoint their judges for a limited number of years; all the rest either appoint them during good behaviour, or to a certain, advanced age of the judge, as sixty or seventy years. Of the latter the number is small, and even this mode although liable to many objections, preserves the principle of independence as the incumbent cannot look to a re-appointment. Those States who have taken the term for years are among the new ones; as they grow older and enlarge their experience they will grow wiser. New Jersey, I admit is an exception. She still retains her Constitution of 1776, and the judges of her supreme court are appointed by the Legislature, in joint meeting, every seven years. The Constitution was made, like the first one of Pennsylvania, during the revolution, and when we had not much experience in the business of government. It has many acknowledged defects and various conflicting causes and interests have prevented a revision of it. I am sure that the appointment of judges by the Legislature for a term of years is not considered by the judicious men of that State as a wise provision. But how has this principle worked in New Jersey. A recent example will show. You know of the schism in the society of Friends, divided into two parties, usually denominated, the *Orthodox* and the *Hicksites*. The latter are the most numerous in New Jersey. Each claims to be of the true, original Quaker faith. A suit was brought in the court of chancery of the State, in which the claims of these parties to supremacy were directly or indirectly involved. The Governor, who is ex-officio chancellor, turned the case over to two judges of the supreme court, he having been counsel for one of the parties, Chief Justice Ewing, and Judge Drake. The case was argued by the first counsel of the State with great learning and indefatigable labour. The judges, after full deliberation, gave their opinions at large, in favour of the Orthordox, on the question immediately in issue, although, I believe it did not cover all the questions raised and argued by the counsel. Whether the judgment of the court

was right or worng is no matter of inquiry. No man lives who now doubts or who has ever doubted, that the opinions of the judges, were the result of their honest and conscientious convictions of the law of the case; no man has accused, or would venture to accuse either of the judges of any partiality, feeling or interest in the subject in controversy; of any impure or undue bias to the one side or the other. What followed? The time arrived soon after when the commissions of these judges were to be submitted to the Legislature for their re-appointment. At the election for the members of that Legislature, this suit and the judgment rendered upon it, and the judges who rendered the judgment were made prominent and decisive considerations at the polls. A coalition was said to have been made between the Hicksite Quakers and a political party in the State of mutual support. They obtained a majority in the Legislature. What was the consequence to Judge Drake? He was turned out of office; he was turned out for the opinion he had given in the honest discharge of his official duty. I say he was turned out for this and for nothing else, for this reason has been openly avowed by some of those who did the foul deed; it has been repeatedly admitted and asserted, and no *other reason has ever been assigned for it*, whatever apologies may have been attempted. Let us pursue this tale of judicial dependence to its melancholy end. Judge Drake had left a respectable and independent practice at the bar to take a seat on the bench of the supreme court, on the invitation and appointment of the Legislature of New Jersey. He removed from the county of his residence to a more central position, that he might the better perform the duties of his office; he performed those duties for seven years with unexceptionable learning, fidelity, diligence, and courtesy, with a salary barely competent to his support. He was a father of an amiable family looking to him for support; he had no property but his profession. At the end of seven years, when he was entirely cut off from his practice as a lawyer, he is turned adrift to get his bread as he might, as a punishment, as a retaliation for a judgment which had offended a powerful party in the State. The sad story does not end here. He was reduced to pecuniary difficulties, and, since we have been here in session, I have seen his death announced in the middle age of life, the very prime of his usefulness. If I am not misinformed as to his circumstances and sufferings, his death may be attributed to mortification and distress, working upon a delicate frame and a sensitive mind. I had a personal knowledge of this gentleman, and may be permitted to pay my humble tribute to his memory even here. He was a man of the most amiable temper and deportment; a lawyer of undoubted ability, and absolutely without the suspicion of stain or reproach upon his moral or official integrity. He discharged his judicial duties with a patient and unremitting assiduity; with a pure and undisturbed impartiality. Such a man, such a judge was made the victim of an angry and disappointed suitor, and the *term for years* was the means by which they wreaked their vengeance of him.

But Chief Justice Ewing, the joint offender, what became of him? It pleased Heaven to take him off before the meeting of this potent Legislature. He died of cholera a few weeks before their meeting. Doubtless he would have shared the fate of his colleague; it has been so said by those who held the power. And why should he not. No

distinction can be drawn between the two culprits which should have saved him. I cannot dismiss this honored name without a word of respect. If, in a State possessing so many men of eminent talents and virtue ; so many lawyers of learning and integrity, any one could be said to be first in public estimation, it was Chief Justice Ewing. He was a man of retired, studious habits, devoted to his library and professional engagements, mingling little with the gaieties or business of the world, less with its politics, and not at all with the restless and intolerant spirit of party or strife. To the bench of the supreme court of his native State, he brought a powerful and discriminating understanding ; a mind richly stored with various learning ; a profound and enlarged knowledge of the law ; a clear head, undisturbed by passion or impatience, and a heart as pure as man can have. That man too was the destined victim of party intolerance and the "*term for years.*" He was saved from this mortification and injustice ; the State was saved from this disgrace by his lamented death.

On motion of Mr. Banks, (Mr. H. having yielded the floor,) the committee rose, reported progress and obtained leave to sit again ; and,

The Convention then adjourned.

MONDAY, October 30, 1837.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'Sherry in the chair, on the report of the committee, to whom was referred the fifth article of the Constitution.

The question being on the motion of Mr. Woodward to amend the report by striking out all after the words, "section second," and inserting in lieu thereof the report of the minority of the committee.

Mr. Hopkinson resumed his remarks, and continued as follows :

Rhode Island is another state, in which judges are appointed for short terms. But where a chief justice is paid for his services with two hundred and fifty dollars a year, or thereabouts, the judiciary can be held in very little estimation. The difficulty should be to get any lawyer, even the humblest, to take the office, and I should presume that the *fear of removal* would never be an objection with any body.

Let me finally, on this part of the case, refer you to the opinions of our most distinguished statesmen and jurists, as expressed in their writings and speeches. I must content myself with making this reference in a general way. A citation of them in detail would require more of your time and patience, than I have the right or inclination to ask. In

the 78th number of the Federalist, the judicial office is most ably discussed, and the tenure of good behaviour treated as a conceded, unquestioned principle.

Thus stands the question as before us, on the ground of *precedent* and *authority*. How is it on the *argument?* Here we find more difficulty, the difficulty of knowing how to go about to prove by argument, what we have been accustomed to consider as an admitted truth: a political axiom; a postulate, clear and self evident. No one has, and I presume no one will, venture to say, that the judiciary ought not to be independent. All profess to want competent, efficient, and independent judges; all feel and acknowledge the necessity of it, and agree that without it there can be no liberty, no law, no safety for person or property. This admission, one would suppose, would carry us one step farther; that the more independent the judges are made of external influence, the better; that a complete, adsolute, entire independence of such influence, is the desired point to be attained; that any thing short of this is an evil, a defect in the system. When I speak of an independent judge, I do not mean an arbitrary, self-willed creature, confident of his own infallibility and obstinate in his will. I mean that the judge in declaring the law, in rendering his judgment upon every case submitted to him, in his opinions of the fact and the law, shall be absolutely free from every extraneous bias, from every pressure of interest, fear, or favor. That he shall know nothing, think of nothing but the case as it appears on the evidence, and the law as he truly and conscientiously believes it to be. In short, that in performing the duties of his office, he shall be placed beyond the reach of every feeling or influence of fear or favor, of any benefit or injury to himself on the one side or the other. He is to apprehend no consequences to himself, *except such as shall arise from his own good or ill behaviour.* I would make him the *arbiter of his own fate*, for the continuence or loss of his office, and I would, having so placed him, hold him to a strict account. Take from him the temptations to be dishonest and unjust, which might assail human infirmity too strongly, and then, if he is dishonest and unjust, he has no apology; he is unworthy and corrupt, and no one will lament his fall and disgrace.

The policy of a wise, and I will say of a just government, will be not to depend upon the duty of a judge to resist temptations, but to withdraw him from them. Every one who has read and considered the infirmity of human nature, will believe, that he cannot prefer a more necessary prayer to Heaven, than that he may be kept from temptation. Ask the ruined speculator; the frantic and beggared gambler; the disgraced and emaciated drunkard; the forger, the robber, given over to irrecoverable infamy, what brought them to their awful fate? They will answer, *temptation.* Inquire into the causes of the fall of ambition; of the dilapidations of virtue, the treacheries of friendship, the falsehood and infidelity of love, they will all be found in *temptation.*

I know it is vauntingly said, it had been repeated again and again here, that if a judge is an honest man, he will be so, whatever may be the tenure of his office. This is truly a fine sentiment; a beautiful and sublime morality; but is it found or founded in truth and experience? Let the man who would offer this argument to you, who would impose

on himself with it, honestly review his own life, and say, *has he always acted upon it;* has he carried it out in his own conduct—has he abided by it at all times, and under all circumstances? If he bear the scrutiny; if he flinch not under the trial, I hesitate not to pronounce, that he is the best and purest mortal that ever lived. This convention is honored by having such a member; we are all honored by sitting in his presence; the state is honored by such a citizen; human nature is honored by the existence of such a man. Let him stand out, that I may behold and reverence the prodigy. Sir, I call upon every man who hears me, who now demands this exalted integrity in a judge, to look to himself, yes daily and hourly, *even here* in the discharge of the most solemn and important powers and duties that could be imposed upon him, that could be entrusted to him, let him answer, does he never feel himself touched and drawn, and strongly too, by the temptation of popularity, by the fear of some paper or party in his district, some printer or demagogue? Does he always look fearlessly and steadily to the question, with an eye that never blinks; and a heart that never beats with anxiety for himself? Does he cast no look behind or before; on the one side or the other, to discover the consequences to *himself;* to serve local opinions and interests, and does he act, in every vote, as he would act, if left freely to the exercise of his own understanding and judgment? Has he always here and elsewhere been willing to surrender his petty objects of ambition; his hopes of a 'squireship, or a seat in the house of assembly, to his strict sense of right and wrong? Before gentlemen ask of judges to raise themselves far above the ordinary standard of human virtue, let them be assured that they have come up to it. Sir, the man has never lived, who can lay his hand on his heart and say, in the presence of his God, the searcher of that heart, that he has never been drawn from his duty by the seductions of pleasure, or the temptations of interest. I know not by what rule of morality, justice or conscience, one public functionary may look with a keen and eagle eye to his popularity and pursuit, in the discharge of his duties, while you demand from another, that he shall walk without halting or deviation, on the line of the purest integrity and self-denial, even to the extremities of distress and ruin. I know that, in the case I have put of a representative, he endeavors to shield himself from his own reproaches by pretending an obedience to the *will of the people*, the flattering unction with which such offenders against their own consciences try to justify or soften the offence, and heal the wound. But if any one of them will look honestly into his own bosom, he will find *self* there, riding on the backs of the people. While you must have men for judges, do not require of them to be angels; and even they might fall; and if they fall not, they would be soiled by the breath of party calumny, or struck by the hand of some resentful enemy.

No wise and just man in his private dealings; no wise and just government in the administration of its affairs, will expose, unnecessarily, those whose faithful services are required, to the dangers of temptation; but will guard them as much as possible, from every inducement and apology to be false to their trust. Let me present to you a judge, truly and honestly inclined; willing and wishing to do his duty, with an ordinary share of firmness. His commission is about to expire; he is to look to those who hold the power in their hands for his office,

for his bread. A cause comes before him embracing political interests and feelings, perhaps directly, or indirectly in the person of some favorite leader of the predominant party in the state, which party has offices and honors at its disposal. Is it not asking too much of a judge, in such a situation, to have no bias, no fear of the result; that he shall not for a moment turn his eyes from the cause and its merits to himself, his home, and his dependent family? Do not ask it. I do not speak of a case of clear, unmitigated partiality and corruption—of undeniable and palpable wrong. Few cases are so bald as this; there are few in which plausible reasons may not be found for the worse cause, and if you will put the ingenuity of your judge to the trial, he may be most unjust in his decision and maintain the appearance of right. Put him not under the difficulty of choosing between his own injury and that of a suitor. Look about you—do you not see daily, in the private transactions of them; in the dealings of debtors and creditors, that *conscience is hard pressed by poverty;* that duty trembles and falters before approaching want and distress? May he not remember the fate of Judge Drake, and endeavor to avert it from himself? May he not remember the portentous question of Cromwell, "Who made you judges?" and ask, will not an offended Governor put the same inquiry to him? I say, sir, to expect of any man, that, to protect some obscure individual, without power or influence, from injustice and wrong, a judge will bring himself and his family to want, when he may find a shelter for himself and them by taxing his ingenuity, to make "the worse appear the better cause," is as unjust as it is unwise. Before you ask this, be assured that you can truly say, you would stand the trial without wavering. If any man, wrapped in his own conceit, and intolerant to human infirmity, will say that he is above the power of temptation, I say to him, he is a fool or a hypocrite.

As I am now opening the subject of this debate, in performance of my duty as chairman of the committee on the judiciary, I cannot anticipate the arguments that may be brought to oppose my principles, and support the report of the minority in favor of a tenure for a limited term of years. Some suggestions, however, have from time to time, fallen from members in the discussion of other subjects, which apply to that now under consideration. I will briefly notice them.

We have heard of "pledges and promises," made by delegates to some powers or persons at home, by which they feel themselves to be bound here, whatever may be their own convictions and opinions; I am free to say, that I hold all such promises and pledges to be rash, unwarranted, and unbecoming an upright and independent representative of the people. We come into this assembly from different parts of the state; we have been sent here to consult together and *then* to decide and adopt that which the good of the commonwealth demands of us. I have never given, or been asked to give any such promise or pledge; I have never been asked to bind my conscience or judgment to any thing by anticipation, and I would not thus bind myself to do, perhaps, what I know to be wrong and injurious to the country, at the bidding of any man or set of men. If the people have confidence in me, let them trust me; if they have not, they ought not to make me their representative. This is for myself. I do not question the principles or motives

of any one who thinks he is bound to a different course. As to the pledges and promises of the delegates in this convention: I will not doubt that when they were given, it was done in good faith, and the vote promised was in full accordance with the opinions of the delegate at the time. That he did not promise to do that which he believed then to be wrong and against the true interests of his country. But what has brought these gentlemen here? Are all our consultations, our deliberations, our debatings, mere useless forms and mockeries? Are they to be terminated by a vote settled immovably, many months ago, before we had spoken to or seen each other? The money of the state and our time are expended without any good purpose or end, if this be the case. We might, in a few days, have severally given in our pledges aud promises, and the business would have been at once settled according to them. No, sir, this is not the degraded situation of the members of this Convention. Heaven forbid that it should be. We are here, I repeat, to consult together respecting great objects of public weal. We bring various opinions and various information from different parts of the state. It is our duty to compare them, to weigh them; to hear each other in a spirit of candor and honesty, to receive the lights we may impart to each other, and to yield to the convictions that are approved by conscience and truth, after such deliberate examinations of every subject submitted to us. Let me suppose that any one of you came to this assembly, with the preconceived opinion, honestly entertained, that the judicial tenuae ought to be for a term of years; that such was the opinion of the people around him at home, and that therefore, he promised them, that he would in this convention give his support and vote for that tenure. Let us proceed a step farther, and suppose, that this same delegate after having listened to the argument of this question, should be clearly convinced that he was in an error; that his opinion had been formed on short-sighted views, that they stand on narrow ground, and not on the broad basis of the general welfare; that it was rash and unadvised; that he owed it to himself, to his honor and conscience, to his country and her dearest interests to retract that opinion; can any honest man, any one who deserves the name of a patriot, hesitate to say what he ought to do in such circumstances? To hold himself to such a promise, would be to make himself the slave of others, to be more degraded than a galley slave, for he, while he tugs at the oar, while his limbs are fettered and bound, and his back lacerated with stripes, he has a free mind, his opinions are free, his conscience is unscarred. As to the gentlemen, who, after hearing the argument, and deliberately reflecting upon the whole subject, in all its bearings and consequences, shall still believe of themselves, and for themselves that the judicial tenure ought to be reduced to a term of years, I shall hold them and their opinions in the respect which is always due to honorable men, even when we think they are laboring in an error. Not so of those, if there be any such, who will repudiate their own judgment, and violate their consciences in the performance of premature promises, "more honored in the breach than the observance." Let us follow one of these delegates, I repeat if there be one, to his home, and in giving an account of his doings here, he should say to the people, by way of recommending himself to them, I have carried into effect, I have put into your fundamental laws, the principle and opinions that you and I entertained before I went to the Convention; but I must tell you, and

this is my great merit, and shows my submission to your will, that I was entirely convinced that our opinion was wrong; that your true interests and those of the Commonwealth demanded of me a different action. What would your constituents, honest and intelligent lovers of their country, reply to you? They would tell you that you had dishonestly inflicted an injury on them and the Commonwealth; that you had violated your duty. They would say, we delegated you as our representative to go and set in the great council of the people; to obtain information which we had not, to have the means of forming correct opinions which we had not. We will trust you no more. Never again will we commit ourselves and our interests to a senseless automaton, a thing that acts without thinking, and decides without hearing. You may have followed the letter, but not the spirit of our will. You have abandoned our dearest interests by a blind submission to an unadvised opinion. which your own better instructed judgment rejected; you have betrayed your trust by *fearing to do your duty.* It is true your fault began in our error, but you had the means of correcting it, and still persevered in it. Rather let the delegate who is trammelled with these promises and pledges go back to his constituents; tell them the truth of the case, confess to them that he has changed his opinion, and explain to them the reasons of it. Let him trust to their good sense, their justice, their generosity, their ready apprehension of what is right, when it is fairly put before them.

Why do I see assembled in this hall men distinguished for talents, for their private and public worth, for the confidence the people have in them, and which they have earned by their virtues and services? If they are to play so poor a part; if they are to have neither will, nor vote, nor speech, nor action of their own, any inferior agents could have performed the low and degraded duties of bounden slaves.

In the beginning of our session these annunciations of the *will of the people,* had something imposing in them, especially to one not accustomed to hear them pronounced with so much authority? When we heard respectable gentlemen solemnly declare, as of their own personal knowledge, the will and wishes of the people, we could not but feel the impression of such declarations from such a source. *The will of the people of Pennsylvania!* Who could put himself in opposition to it? But this cry has been repeated so often; it has come forth on such petty questions and occasions, that it has lost its potency; it has, indeed, if I may say so, become almost ridiculous. Scarcely a proposition or opinion has been offered to us, that it was not backed and vouched by the will of the people. That great power has not been reserved for great principles, but if the question was, whether the general election should be held on the second or third Tuesday of October, the will of the people was brought down to decide it. This is nonsense. As to myself, I know of no will of the people but this—that every representative of the people here shall do his duty faithfully and fearlessly, according to his own calm, unbiassed judgment and true conscience. If they have any other will, repugnant to this (which I do not believe) I am not their servant to do their work. Shall I lay myself a voluntary, bounden slave at the feet of other men like myself. Shall I surrender my conscience, my honor, my soul to those, who owe no responsibility to me or to any one for the consequences

of their commands, but leave me to answer not only to myself, but to the country for all that may ensue. Is this to be a freeman or the representative of freemen? It is incomprehensible to me, that gentlemen, who cherish this anxious, tender care and concern for the freedom of others, should have so little regard for their own. But let us not be deceived; we are not. Let us search into this humble devotion to the people, and shall we not find it neither more nor less than a devotion to a party, and pursued one step farther, will it not be found to end in the *patriot himself*, in some selfish, personal object of ambition or gain?

It has been urged from several quarters of the house, that the cry of the people is against "*life offices*," that they will have no life office in the Constitution. Nor is there any such; the judicial tenure is not declared to be for life, but "during the good behaviour" of the judge! It can, therefore, be a life office only on the contingency and condition that he shall behave well during his life. Does any one object to this? Is any one desirous that a judge shall not behave well, because thereby he will have his life in his office. If a judge discharge his duties faithfully and diligently, he cannot be removed; if he does not he may be removed. This is the life office, and every good man must desire that every judge may thus make his office continue during his life. But this name is given to this tenure to bring odium and distrust upon it. I well know, sir, the potency of names and phrases upon the public prejudices and passions. Parties have their watchwords, and soldiers their *battle cry*. They are given to them by their leaders, the rank and file repeat them, shout them, without knowing or inquiring their meaning, or caring whether they have any or not. *No popery* kept nearly one half of the people of Great Britain, a brave and generous race, inhabiting a fertile soil and a genial sky, under a galling, degrading oppression, suffering under intolerable penalties and disabilities for more than a century. Ireland has smarted and groaned, has been kept miserable and poor, by the power of an unmeaning phrase. The same senseless cry of *no popery*, under the instigation of Lord George Gordon, made the mob of London frantic, and led them on to deeds of blood and conflagrations of incalculable mischief. *Aristocrats* was the murder cry of revolutionary France, and neither age or sex, virtue or innocence could save the victim, when popular fury or private revenge had fixed upon him this dreaded appellation. Sir, we have seen, we even now see, the power of a name in these United States. Need I fear to say, that the *name of a Federalist*, without farther inquiry into the character or principles of the man, has excluded some of the best and wisest, and truest men of our country from every public trust, and has even made them objects almost of abhorrence to the mass of the people. I am, and always have been one of this persecuted, despised party. There are, it is true, but few of us left, but we may claim to be sincere at least, for we have had a long and severe trial, when, PERHAPS, we might have been taken into favor by abandoning our principles. I began with the administration of Washington; I was and am a federalist of that day and school. I have never changed, because I have as yet seen nothing better. I am one of the fragments, an unimportant one now and always, of that broken and scattered party; but it cannot be said of me, (as Mr. Jefferson pleasantly remarked of a Virginia member of Congress) that I am the residuary legatee of the federalism of Pennsylvania, for I think I see some sixteen or eighteen good and honest faces here,

who will not deny the federal faith that is in them. The appearance of such men in this place, affords a gratifying evidence that the odium which has so long overwhelmed them is wearing out. On this subject I will beg leave to say, that, in my opinion, the government of these United States, never has been, and never can be successfully administered on any other than federal principles, which were the spirit of its life, infused into it by those who made and best understood it. This was particularly manifested in the late war with Great Britain, and in the late disturbance in South Carolina. How was nullification put down there? By a proclamation from the President which was federal, yes, *extremely federal.* I think that the whole struggle of the parties which began in the first administration, has ended in the triumph of the *principles* of one of them and the *men* of the other.

I confess, sir, that I am departing, it shall not be much longer, from the question before you, to which I have endeavored, and I believe with success, strictly to adhere. But I cannot look back to the bright days and palmy state of our republic under the administration of *Washington,* without feeling something of the spirit of those times, and recurring to their high and pure principles. Let me offend the feelings and opinions of no man. I mean it not. I mean to draw no comparison or contrasts—WASHINGTON! You have seen the attempts of the painter and sculptor to represent his image; you have read of his achievements, his virtues, his actions, and his greatness on the pages of history, and in oft repeated eulogies in prose and verse, in public speeches, and private letters from the most distinguished men of Europe, as well as of his own country, but I tell you in the sobriety of truth, that none can have a full conception of that wonderful man, who have not beheld him as he was. I have seen him standing before the assembled representatives of the people of these United States. I have heard him make his communications to them, with that calm and quiet dignity, that power of virtue and truth, which were peculiarly his own. The kings of the earth might feel humble before *that* President of our republic, when thus discharging his high functions. An English nobleman, and a proud one too, (Lord Erskine,) wrote to him thus—"I have taken the liberty to introduce your august and immortal name in a short sentence, which will be found in the book I send you. I have a large acquaintance among the most valuable and exalted classes of men; but you are the only human being for whom I ever felt an awful reverence. I sincerely pray God to grant a long and serene evening to a life so gloriously devoted to the universal happiness of the world." This was written in March, 1795.

Such was the reverence paid to your Washington by strangers; is it here only, in his own country, by his own countrymen, that his name and authority shall go for nothing; that a constitutional principle sanctioned by that name and authority shall be denounced and hunted down, as hostile to the liberties of the people? Such is not my remembrance; such is not my veneration for him. I would not exchange my personal knowledge, my bright and proud recollections of Washington and the great men of his time, honored and trusted by him, for the youth and all the glowing prospects and anticipations of the youngest politician of this body. The anticipations of a politician! What are they? Delusions, disappointments, mockeries—all. Let those who

are now sailing on the swelling sea of popularity, with flowing canvass and favoring gales, with the desired port in view, but look at the wrecks and ruins that lie on that perilous coast; promises broken, friends betrayed, principles abandoned, and the hope lost for which all these sacrifices were made. If, perchance, he reach the shore, is he safe? does he stand on firm ground? By no means; he totters on a moving sand, and is carried off by the next swell of the tide that took him there. Let those who are chanting pæans to the power and infallibility of the people—beware. The hour may be approaching when they will fall, as hundreds have done before them, under the justice, the ingratitude, or the fickleness of the same people. I have seen many successions, at short intervals, of these men of the people, these popular leaders, passing from insignificance to power, and back again from power to insignificance. They were heard of no more, for a fallen politician is extinguished. If it were proper, I could bring to your recollection names which were omnipotent over the spirit of party, who held the wand of Prospero, to raise or allay the storm, who seemed to hold their power so surely, so firmly, that no time or accident could impair it, after running a brief race, supplanted by some new favorite, rejected and scorned. Closing their lives in poverty and neglect, they now lie in forgotten graves. I have known them repent their folly in bitter lamentations, not unmixed with remorse at the sacrifice of their integrity. There are doubtless some of you, who now hear me, who have witnessed, as I have done, the rise and fall of these favorites of the people. You have seen them ascending slowly and painfully, with incessant labor and trembling anxiety, to the desired eminence; resorting to all the arts of low intrigue, and falsely flattering the pride, the folly, the very vices of the people. How hollow and hypocritical was this adulation; how contemptible this self-degradation! After a short and precarious possession of their power, you have seen them falling suddenly from their "high estate," never to hope again. Some of these demigods, who have swayed the destinies of the Commonwealth, are, even now, living powerless and obscure. What is their greatness now? "A tale told by an idiot."

We have been repeatedly and earnestly assured that it is the *will of the people* that the Constitution should be amended, changed in something, and every one assumes that that something is just what he happens to want. I ask, what is the proof that this is the wish of the people? I mean of the people of Pennsylvania, in any proper sense of the phrase. Are gentlemen sure they do not mistake and substitute for this opinion, the wishes of the little knot of politicians who direct the affairs of their village, or neighborhood? Can one of them on any direct, satisfactory proof, answer even for his own county on any one specific proposition or amendment? Let him show his proof here, that we may judge of it, that we may see if it warrants his conclusion. On this subject of the judiciary, not a petition has been laid on our table; in no audible, distinct manner have the people spoken to us about it; but we are left to the vague conjectures, for they are no more, of gentlemen, drawn from sources and founded on evidence they can neither produce nor explain. But we have been told that the call of the Convention, our existence here, is a proof that the people require changes in the Constitution. If this were even so, the important question

remains, what changes do they want? Would they have every thing changed? Do they wish to break up the foundations of their government, and raise another on new principles? The argument is too general; it gains nothing for its advocate unless it can be brought down to some specfiic amendment. Now, let it be granted that the vote for the Convention should satisfy us that there is a majority of the people for amendments to the Constitution, yet is it not obvious that there may not be a majority of any one of those proposed? Some may have desired reform in the legislative department, some in the executive, and others in the judiciary; but a majority may not have agreed on any one point, either as to the department to be reformed, or the changes to be made in them. If the vote for the call of the Convention is the evidence of the wishes of the people respecting a reform of the Constitution, what will the delegates (who profess to be reformers) from Berks county say, where there was a majority of about three thousand against the Convention; of Northampton, where the majority was nearly two thousand, and so of other counties. But the serious truth of this matter is, that the call of the Convention proves nothing, either for amendments in the general, or for any particular amendment. The utmost consequence that can be fairly deduced from it is, that after an experiment of nearly fifty years of their government it was thought that a revision of it might be expedient; that experience might suggest some beneficial changes, or might have satisfied us that none are necessary; and we should act or forbear to act upon it accordingly. We may be said to be a grand inquest inquiring for the Commonwealth, whether its form of government requires change or not. It is our duty fairly and impartially to inquire and decide, and make our presentment to the people as in our judgments and consciences, justice and truth require. To say that because this power is delegated to us we must therefore propose changes, that we must therefore believe the people have resolved that the Constitution is defective, and that we must propose remedies for it, is not less unwarranted and unjust, than if a grand jury were to believe that because they were empannelled to inquire, they must therefore verify the charges submitted to them or they would disappoint the authority that had called them together. Let those gentlemen answer me, who have come here with the belief that they know the opinions of their own county, from their conversations with a small, a very small part of the people, and those altogether of their own political party; or perhaps from some political meeting, at which also but a portion of the party attended, that party being but a portion of the county, let me ask, whether, before the *prepared resolutions* were vociferously adopted, as the *unanimous sense* of the meeting, for nobody came there to make objections, the subject was candidly, fully, and coolly explained? Was any attempt made, or any opportunity given, to examine it, to hear both sides of the question, or to know the truth of what was said on the one side? Was there any thing like a deliberate judgment formed or expressed; or was not the whole proceeding the mere sudden impulse of excited feelings, equally thoughtless of the past and future, and worked into action by some local or temporary cause; by strong appeals to party purposes and party power?

Before we are called upon to respect such opinions as the will of the people, we should be well informed upon these points, and know *how*

by whom, or for *what purposes* they were obtained. No, sir, it is because at such meetings, on such occasions, no fair and full examination of a subject can be had; no deliberate judgment of the whole case can be formed, on great constitutional questions, requiring a great extent of inquiry and examination, that the people have sent us here, to examine inquire, and judge for them; to consult together, to compare facts and opinions, and finally to submit to them the honest result of our deliberations and labors. Be assured, sir, that in beginning, prosecuting, and terminating these inquiries and deliberations, the only sure foundation we can build on, the only guides we can follow with an assured step and a fearless anticipation of consequences, are our own unbiased judgments; our own uncorrupted consciences, and honest sense of right. All the rest, all other motives and calculations will fail—these never. Popular opinions are fickle; political friends and associates will abandon us, but honesty, independence, and a clear conscience will stand by us at all times and under all circumstances.

The objections we have heard on this floor against the tenure of good behaviour, have generally been found to consist of some local or temporary evil, of personal defects in some existing judge, but have we heard any argument or evidence against the principle for which we contend; any thing to satisfy us that it is not the most safe and salutary, on the whole, and affords a more certain security for an able and just administration of the laws than a tenure for years. If there be a clamor, a cry, as it is called, among the people against these commissions for good behaviour; if a court and the judges are obnoxious to the people, which, as a general truth, I do not believe, and for which I have heard no evidence, I wish we had it in our power to trace it to its true origin. It might, perhaps, sometimes be found in the indiscretion or impatience of a judge, whose patience has been hard pressed; sometimes in some physical infirmity; but much more frequently we should find it in the resentment of some disappointed suitor, who always thinks the judge wrong; or in the temper of some offended lawyer, whose ignorance and impertinence has been rebuked. Has any one of you attended a court without witnessing how much a judge has to bear from some members of the bar, who would recommend themselves to the bystanders for spirit and independence by a gross disrespect to the authority of the court. Such disappointed suitors, such offended lawyers, tell their own story, with all the exaggerations and coloring of passion, in the court yards, in the bar rooms of taverns, and wherever they can find a willing listener. The other side of the story is not told, and the clamor is thus excited against the court. But let it be granted that on some occasions gentlemen of the bar have had just cause of complaint of the conduct of a judge to them personally, or in the treatment of the trial of the cause; that some suitors may have had reason to think the judgment wrong, and that justice has not been done. Will high and honorable men, lawyers or suitors, who are here to decide upon the great and vital interests of the Commonwealth, bring their private griefs into the councils of their country? Will honest and true patriots uproot the foundations of their government, or destroy a good principle in it to redress a personal wrong? Will they pull down the pillars of the temple to crush an obnoxious judge in the ruin? Will they cut down the tree, because it may occasionally bear some unsound fruit, which will fall off of itself? I appeal to my brethren of

the bar, always the friends of liberty and good government, to banish all such recollections, if they have them, to discard all such motives, so unworthy of them, of their profession, and of the high trust now committed to them.

Whatever may be the truth and magnitude of the evils complained of, are they the growth or consequence of the tenure for good behaviour? Will you remove or mitigate them by changing it for a term of years? These evils, where they have existed, arose, not from the tenure of office, but from the personal temperament or defect in the judge; and the same judge would be no better with a commission for seven or ten years. You will certainly aggravate the complaint, by being driven to inferior men for the appointments. Will your judges be more learned and competent; will they be more wise, discreet, patient, and polite, under commissions for ten years, than during their good behaviour? I cannot comprehend any reason for such an expectation. There is another reason of great weight against the proposed change of tenure. A judge ought to be a man of high rank in his profession—and your Governor ought to be able to induce such to quit an honorable and lucrative practice to take a seat on the bench. A retirement to such a position, at a certain time of life, becomes desirable, even to the highest at the bar, provided he may be secure in it, and not be obliged to look to a return to the labors he was weary of, and, probably, to the impossibility of resuming them, when they may be necessary for his support. Your Governor, having this range of selection, will have no apology for bad appointments; but if you narrow his choice in the manner proposed, you will take from the responsibility of his selection, and afford him a good apology for bad judges.

It may be asked—why should the judiciary have this permanent possession of office, and not the other branches of government? I will answer. In the Governor, the Senate and House of Representatives, all the powers of the government are lodged; they are, in fact, the depositories of the power of the people. They are the fountains from which those powers are again distributed to and among the people. The whole political power and patronage of the Commonwealth are at their disposal. They make your laws; they impose taxes; they collect the revenue, and afterward direct its expenditure; they make your offices, and appoint your officers. The propriety, the necessity, of holding such functionaries to a frequent and effectual responsibility to the people; of making them know and feel every hour of their official existence, that their authority is a brief one; that their mistakes or misdeeds may be speedily corrected, is sufficiently obvious. A permanent Executive and Legislature, would be an intolerable despotism, owing no accountability; and having no remedy for abuses short of a revolution. Where is the power that could control such a power? On the other hand, the judiciary has no political power, not an atom; no patronage, not even the appointment of the clerks of the court. This is absorbed by the Governor. It makes no laws; it has not a dollar of the public money at its disposal, for itself or any body else. They can in no possible way make any encroachment upon the liberties of the people; they are merely and solely a tribunal to execute and administer the laws as they apply to the cases and persons brought before them. To this purpose, their authority

is great and important; but it is altogether a conservative power, conservative of the laws and of the rights and liberties of the people under these laws. With the law only as its weapon of defence, the judiciary stands between the people and oppression, and injustice from every quarter; but this power can never be used offensively against the people. But to be used defensively and for their protection, it must be independent of the powers whose usurpations and wrongs are to be prevented or arrested. The difference, in this respect, between the judiciary and the other branches, appears to me clear and undeniable, and brings us to the result that while it would be dangerous to give the executive and legislative departments a permanent tenure in their offices, it would be dangerous not to give the judiciary such a tenure; that the great uses of this department would be destroyed or materially impaired by an uncertain, shifting, dependent possession.

It has again and again been said here, and truly said, that our danger is from the *political power and patronage* of the executive and legislature. All seem to agree in this. That it is to these we must apply our guards and checks: to them we must look with an eye of suspicion and caution. The legislative branch has been declared to be that most prone to the usurpation of authority, for, calling itself the immediate representation of the people, it is apt to believe it holds, and may exercise, all the original rights of the people. There is no check upon this abuse, known to your Constitution, or that you have any power or means to apply but the judiciary. Now observe, that we agree that the executive and legislature are thus powerful, and require restraints; that the only practical check upon them is the judiciary, and can it be denied, that all the power you give the judiciary is for your own protection; and that all you take from it, is necessarily so much added to those who are already too powerful? Make the judges dependent upon *them*, and they will have *all;* they will have a license as free as the winds.

Let me recall your attention to what has been repeatedly declared to us on this floor, from the mouths of the most zealous reformers. Have they not said, that a principal cause for calling this Convention, the loudest complaints of the people have been against Executive power and patronage; that it is here that reform and curtailing are demanded, and that the people will not be satisfied if this is not done? What are you now about? How will the proposed change in the judicial tenure operate upon the Executive power? Do you not see that it will enlarge it immeasurably and most dangerously? What will be the result of your endeavors to diminish the power of the Governor? How will you meet and satisfy what you say is the wish of the people? Why, forsooth, you will take from him the appointment of the county offices, prothonotaries, registers and recorders, which give him more vexation, and make him more enemies than all the rest of his patronage, and you will put, at stated times, the whole judicial power of the Commonwealth (with the exception of the justices) at his feet. That portion of the judiciary which he should fear—which is the supervisory power over him, is to depend upon him for their commissions, that is, five judges of the supreme court, eighteen or twenty president judges of the common pleas, and more than one hundred and fifty associate and district judges. It is a grant of power of infinite importance and extent; in the hands of a bold and able man it

will be worth all the rest of his power. Oliver Cromwell wanted only to subdue Westminster Hall; to have the judges in his grasp to make him absolute and irresistible. That was the troublesome power, which hung upon his usurpations and tyranny; and although you would not put it at the disposal of your Executive day by day, and every day in the year, you encounter the same evil in a lesser degree, you depart from the same principle of preservation, when you do it every seven or five years. Let us be secure in the fearless and faithful administration of the law *every year;* and let us not for two or three years of every term of a judge's commission, have him trembling in his seat for his own safety, and looking anxiously to the power that can make or destroy him.

It has been vehemently urged upon us, that there is no means of getting rid of an obnoxious judge, of a bad judge, of an unfortunate appointment. Surely, the Constitution has not been inattentive to this. For gross cases of misbehavior it provides an impeachment; for lesser ones, a removal by the address of both branches of the Legislature. Is not this enough? But removals have been found impossible, or too difficult in this way; attempts have been made but they have failed. And why have they failed? It must be either because sufficient cause was not shown to warrant the removal, or because members of the Senate and House of Representatives have been faithless to their duty; have not honestly executed the powers given to them by the Constitution. Are gentlemen prepared to prefer and to sustain this charge against them? Is it not, sir, more likely that, in any particular case of a judge here complained of; here cited as a proof of the inefficiency of the constitutional mode of removal, the gentlemen who complain, and who must have a very imperfect knowledge of the circumstances of the case, of the evidence for and against the judge; who must have formed their opinions from general views and probably partial representation, is it not more likely that they are mistaken, than that the senators and representatives have done wrong, have given judgment erroneously or wilfully wrong, after a full and patient hearing of the whole case, of the evidence and the defence? But if we should agree that this tribunal has not removed, where it ought to have done so, how is the fault to be imputed to, or visited upon the judiciary or its tenure of office. The constitutional provision is good and sufficient, if honestly executed, and if your Legislature will not honestly execute it, find a way to make them, or constitute another tribunal for the trial, but do not make it a reason for destroying or impairing the security and independence of your judiciary. The fault is not theirs; why would you apply your correction there?

I consider the great security of civil liberty to rest on these foundations: 1. That the laws shall be made by the representatives of the people, under such restrictions as the people themselves have ordained. 2. That laws thus made shall be faithfully and fearlessly executed by *competent* tribunals. The first point is firmly and indisputably established in Pennsylvania. The second, that is, competent tribunals, depends upon having judges of competent learning and knowledge, and *putting them in a situation to use their knowledge, with a perfect integrity, free from every undue bias or influence, personal or political.* And to preserve the harmony and uniformity of the laws; that they may be the same to-morrow as to-day; the same for one man at this time and another at a

future time, it is necessary that these tribunals should have a reasonable permanency. The law is a complicated and comprehensive science; it embraces an infinite variety of subjects; it covers and penetrates all the business of man in society. Much study and great experience are required for those who are to administer in detail this extensive and intricate system. See the volumes of your own statutes; the still more numerous volumes, indeed the large libraries, of judicial and authoritative decisions upon the rights of persons and property. They must be all understood and preserved, or the uniformity and harmony of the administration of justice will be deranged, and every suitor will be delivered over to a new rule founded on the caprice or errors of his judge. Assuredly for such duties you should have in your service, men, not only of undoubted character and integrity, and strong in public confidence, but of high standing in their profession, of approved learning and experience. How are we most likely to obtain such men? How are you to withdraw them from a lucrative business, to induce them to make great pecuniary sacrifices? Your salaries fall far short of this. You must give them security and stability in their places. They must know that while they perform their duties faithfully, while they "behave themselves well," they have nothing to fear, and may not be dishonored and impoverished to gratify a personal or political enemy, or make room for a rival, or some expectant of party favor.

The last and most important reason for an independent judiciary remains to be briefly noticed. It is peculiar to our American governments. We have not an omnipotent Legislature, a British parliament. The same authority that has imposed limits and checks to the power of the Governor and judges, has also prescribed the action of the Legislature. It is the *authority of the people*, by whom, and for whom the whole fabric of government was created and framed. The people have ordained and established a higher power than that of their representatives and placed it over them. This power is not to change with the fluctuations of popular opinion from year to year, or to be swayed by party passions or interests. This is the *Constitution*, and it is the *supreme law* of the land. But this supremacy, these limits and checks upon legislative usurpation upon the rights of the people, would be merely nominal, without substance or any practical usefulness, if there be not a power in the government to sustain them, to enforce them, to array them into effect and repel the first step of encroachment. Where is this controlling authority? In the courts, or no where, and not there unless they are independent of the powers to be controlled, of the Governor, the Senate and the House of Representatives. Allow me to present a case to you by way of illustration. Your Constitution declares, that no *ex post facto* law shall be enacted, that is, a law making an act criminal, which at the time it was done, was innocent, was prohibited by no law. But the Legislature do pass such an act, and a citizen is brought before a court for trial, charged with the offence thus created. Who or what can save him but the court, and the court can do it only by declaring the act of the Legislature *unconstitutional and void*, by sustaining the supreme law, and disregarding the act which violates it. Look upon the proceeding. There sits the judge, and there stands the accused before him. In answer to the charge, with the courage of a freeman, confident in the protection of the Constitution and the integrity of his judge, he holds up

the Constitution, he points to the clause prohibiting an *ex post facto* law, he asserts his exemption from all guilt and all responsibility to that law; he says that the Legislature, that the Assembly and the Governor who have given their sanction to this act are the true offenders, are the guilty ones, having offended against the supreme law; and he demands of the judge to discharge him and pronounce the act a nullity. In the back ground of this picture you may behold this Governor, one of the parties offending, holding the commission of the judge, which, perhaps, in the next month or week will expire, and menacing him with the loss of his office if he shall dare to pronounce a sentence of condemnation upon the act in question. The judge must then decide, whether to preserve the Constitution, whether to protect the stranger, an obscure unimportant individual from injustice and wrong, he will sacrifice himself and his family. We are answered that an honest man would do this. I hope he would. I wish that we had many such honest men; but it is a cruel alternat.ve, and I pray do not put any officer to such a choice, and do not rely too confidently on his making the right one. But you tell us that this Legislature must answer to the people who will not fail to resent this violation of the Constitution. What becomes of the injured citizen in the mean time? He must undergo the penalties of the unauthorized act, even if they bring him to ruin. Methinks I hear the judge speaking in the language we have heard here, or in the spirit of the arguments. He says to the accused, do not expect that I will interpose myself between you and the power which holds my fate as well as yours in its hand. Take your complaints to the people, make your appeal against the law to them. Explain your grievances; get them to listen to you, and to understand your wrong. Withdraw their attention at the next election from their own objects, to hear and consider your case; to examine the constitutionality of the act under which you suffer. Can any thing be more vain and absurd than such a remedy for such a wrong; than the expectation of redress in this way? But if all these difficulties are overcome, and the people are induced to examine the case, and do decide that the law is unauthorized, and the citizen has been unjustly prosecuted under it. What then? The offending representatives are not elected. And what redress is this to the injured party? Sir, you must have a power in the State to prevent these injuries to your citizens, or they can have no protection from gross violence; the Constitution can have no security for itself, nor impart any to the people of this Commonwealth. Your courts, your judges must do this, and you must enable them to do it faithfully and fearlessly, apprehending no harm to themselves, whomsoever they may offend.

I will detain you, sir, no longer. Nothing but my serious conviction of the vital importance of the principle I have endeavoured to defend to the safe and harmonious action of the government, to the true administration of the constitution and the laws, could have induced me to trespass so long on your time.

We come here to serve the people, not to flatter them; to attend truly and faithfully to their best interests, not to submit ourselves to their errors and prejudices; to do our duty to our country, uncontaminated by any selfish views of our own. Let us not descend from this high ground of public service, to promote some transient and local concern, or to gratify

some passion or feeling of our immediate constituents. Let us not deceive ourselves, nor hope to deceive others by excessive professions of devotion to the people. Beware that others do not discover, or believe, that at the bottom of this effervescing love for the people, there is lurking a selfish regard for our own objects of ambition or gain ; that this is the leaven which moves and animates the whole mass. Why are we assembled here, but to consult together, to reason with each, to deliberate and decide according, *each man*, to his own understanding and conscience ? If we shall turn aside from each other, *from ourselves and our own convictions*, to look for signs and indications of popular opinions, those sudden and changing ebullitions, formed without examination of facts or consequences, without reasoning, or ordinary reflection, we are spending our own time and the treasure of the Commonwealth *here* most uselessly, most unjustifiably.

What more can government do for a people than ours has done and is doing for us ? What can we gain by a change of any fundamental principle ? What may we not lose ? Universal prosperity, public and private ; perfect freedom for every man to get what he honestly can by his talents, industry and enterprise, with the full enjoyment of it after he has obtained it. In the history of man there is nothing like the condition and rapid improvement of these United States, and of this Commonwealth standing in the first rank. Any change from a condition, so high and so happy, must, for it is untried, put to hazard, more or less, the blessings we enjoy which we know to be our own, and of which we cannot be deprived but by our own rashness or folly. You may, perhaps, see and understand the beginning of the change, but who can foretell its effect and influence hereafter, upon your institutions ; who can say when and where it will end, to what it may lead ? It is called *reform* now, a most dangerous phrase, but what shape may it not take hereafter? The next step is *revolution*. Politicians, who are out of power, desire any thing that may give them a chance of getting in, and they set about persuading the people, who have never dreamt of it, that they are oppressed, and that there must be a *reform*. They would shake the whole fabric to its foundation, and derange the whole order, to dislodge their successful rivals ; they would, savage-like, put a torch to the building that contains and secures their enemies. Such are politicians by profession and calling who are seeking power and place for themselves. The great mass of the people, although they are artfully brought into the contest, have, in truth, no interest or feelings in it. It is a personal, selfish strife, in which every honest principle is violated, truth and decency thrown aside, the public good disregarded, and the foulest means resorted to for victory. Such are the conflicts of party. They grow on a free government, and unless it is a wise one, they will destroy it. Let us endeavor to prove to the world, for the experiment is now on trial in this country, that a people may be both free and wsie.

Mr. Woodward rose and said that on no previous occasion in his life had he risen to address a public assembly under so many embarrassments as he felt at present. The subject, said Mr. W. is large and difficult, having too much scope for me properly to comprehend it. I cannot bring to it, as has been done, treasured stores of learning, or the experience and gravity of age. The opposite argument has been sustained

with an ability and eloquence to which I can make no claim. The calm dignity, the elevated character, the venerable age and the polished mind of the delegate who has made that argument, admonish me to shrink from a contrast in which I must necessarily suffer so much. And if I should take counsel only from my ambition and my fears, I *should* shrink from the contrast, and, either avoid the discussion wholly, or seek an encounter with some virgin blade in another part of the house. But, sir, I did not come here to pursue the dictates either of my ambition or my fears. I come, the delegate of a body of freemen, to perform stern and solemn duties—duties which the age and country in which we live demand at my hands. This is neither the time nor place for shrinking. Notwithstanding the embarrassments of my position, the difficulty and intricacy of the subject and the unequal odds against which I am to contend, it is my intention to perform my present duty faithfully and with such ability as I have.

Mr. Chairman, I concur fully with the learned delegate from the city, (Mr. Hopkinson) that all selfish considerations and party feelings should be excluded from this discussion. Let every unworthy motive and feeling be absent, and let the pure minds and sound judgments of members be brought to this investigation, unexcited by party prejudices and feelings, and anxious only to promote the best interests of the people whom we represent, and whose Constitution we are now considering. The gentleman from the city informed you, in the outset of his remarks, that he could give no interest to the argument, and he cautioned the committee against expecting any thing more than dry details from him. Mr. Chairman, if it was necessary for that gentleman to throw out such a warning to the committee, how much more necessary is it for me. How unnecessary the admonition was from him, the sequel has shown—I shall prove how appropriate it is for me.

I concur entirely with the statement of the delegate that the committee on the 5th article, composed in the manner it was, found itself unable to agree in a unanimous report on the subjects referred to it; and I sincerely regret this fact, for it would have been a source of no small gratification to my colleagues of the minority and myself, to have joined the learned gentleman of the majority, in a unanimous report for the action of the Convention. But this could not be. All the subjects of the 5th article were fully discussed in that committee, and we agreed where we could; and where we could not, we differed like gentlemen. The minority could not concur with the majority, in reference to the good behaviour and tenure of the judges, commonly called a life tenure; and we were constrained to present a separate report on that subject, recommending an amendment, which goes to abolish that tenure, and to substitute for it a tenure of years.

Something has been said, Mr. Chairman, by the delegate from the city, in reference to the transactions of that committee, and I should not allude to them, except in the general manner I have done, if that gentleman had not brought them to the notice of the committee of the whole. I understood him to say that the point, in reference to the official tenure of the justices of the peace, was yielded by way of a compromise. I did not understand from his observations, what was the nature of this compromise, nor with whom it was made, nor what was its consideration.

The impression might be derived from his remarks, that we had given up the limited tenure of the judges, in consideration of the agreement of the majority to yield the life tenure of the justices, but I feel satisfied the gentleman did not mean to be so understood; and the explanation he has made this morning of his former remarks, removes all suspicion of any such compromise. But the compromise was spoken of, we learn, for the purpose of explaining that it was no repugnance to the principle of the good behaviour tenure, which induced the majority to give it up as to justices of the peace. When their report was made, the importance of this surrender was perceived, and properly estimated, by the quick apprehension of my friend on the left, (Mr. Ingorsoll) and it having been pointed out, the gentleman from the city, who was chairman of that committee, apologises for the report, on the ground that it was a compromise, not with us, but among themselves of the majority.

Here Mr. Hopkinson made a brief explanation.

Mr. Woodward resumed. Let us understand the matter correctly. The majority concurred in the report concerning the 10th section of the 5th article of the Constitution. After their report was made, two gentlemen of the committee made a report recommending that justices of the peace be appointed by the Governor for the period of five years. The difference between the two reports on this point, consists in the *mode of appointment*—the majority recommending their election by the people, and the minority recommending that they be appointed by the Governor. But whether elected or appointed, both reports concur in assigning to them a limited tenure of office. According to both, justices of the peace were to be commissioned for the period of five years, so that your judiciary committee seem to have been unanimous on this point. But the committee on the 6th article having reported on the same subject and very much in the same manner as the majority of the judiciary committee, their report came up first for consideration by the Convention, in committee of the whole; and the gentleman from Lancaster, (Mr. Konigmacher) moved an amendment to the report of the committee on the 6th article, which proposed to continue to the Governor the appointment of justices of the peace, but for the term of *five years*. After that amendment was negatived, and it was thus settled that justices should be elected, and not appointed, the question recurred on the tenure, and the committee of the whole were so nearly unanimous, in favor of the limited tenure, that no gentleman thought it necessary to demand the yeas and nays on that question. Such are the facts in connection with this subject, and from the history I have given of the matter, it appears to me that the committee on the 5th article did unquestionably contemplate the surrender of the good behaviour tenure in the justices' commissions, and that the Convention have approved of that surrender by a most decisive vote. I apprehend then, Mr. Chairman, that here is one point of considerable importance gained in this discussion.

The learned delegate from the city next proceeded to prove that the justices of the peace do not properly form a part of the judiciary of the Commonwealth, and that, if the question of tenure had been conceded in relation to them, it furnished nothing against his argument. I do not propose, Mr. Chairman, to enter into any nice and metaphysical distinctions in the subject under discussion; nor do I mean to argue the ques-

tion whether justices of the peace, who have committed to their charge, to a limited extent, the administration of the laws of the State, should be called judges, justices or by some other name. I am about to say, merely, that I find them provided in the judicial article of the Constitution, which says, that "The judicial power of this Commonwealth shall be vested in a supreme court, in courts of oyer and terminer and general jail delivery, in a court of common pleas, orphan's court, register's court, and of a court of quarter sessions of the peace for each county; *in justices of the peace;* and in such other courts as the Legislature may, from time to time, establish." I find these justices to be invested with some power in criminal cases, and an extensive, though not unlimited, civil jurisdiction; and I find, from experience and observation, that they exercise an amount of power, in administering the justice of the State, which exceeds that of many, if not of all, the other judicial officers of the Commonwealth.

Mr. Hopkinson rose to explain. He had, he said, expressly stated in the course of his argument, in terms, that the justices of the peace did constitute a part of the judiciary, and a most important part of it. But he had also said that, although they did form a part of the judiciary, yet they were put in the Constitution on a different footing from that of the judges of the courts.

Mr. Woodward resumed. It is probable Mr. Chairman, that I may have misunderstood the gentleman from the city. I have shown you what footing they stand on in the Constitution, and it is enough for my purpose that their duties concern the administration of justice and are of a judicial character—that the office is not ministerial, for it cannot be exercised by deputy, and that they are officers of the first importance to the people. What court have we in Pennsylvania, whose jurisdiction and administration go home so directly, not to the doors only of the people, but to their hearths and firesides? The justices are scattered abroad among the people in every township and neighbourhood of the State—they mix incessantly with the people—they are always accessible by suitors. If there be danger to the purity and independence of our judicial officers, from a limited tenure, here, in the justice's office, more than in any other, that danger must exist.

We have heard much said about the manner in which the rich, the influential and powerful man, may approach and effect our courts of justice and what danger there would be to suitors contending against such a man, on the eve of the expiration of the judge's commission; but does not this argument against limited tenures apply with redoubled power to the justices of the peace? The justice may be a weak man and a poor man. His mode of transacting business admits parties to the most familiar intercourse with him. He is shut out from the public gaze, and here, if any where, might we expect to find judicial virtue and independence tried and seduced. Here, if any where, should the protecting influence of a permanent tenure be felt, and if the limited tenure can be tolerated here, we may, I think, trust it elsewhere.

What then do we find? The committee on the judiciary reporting, unanimously, in favor of the limited tenure for justices; a majority of that committee recommending also that they be elected by the people, and the Convention, by an overwhelming vote, deciding that they shall be in office but five years at a time, and that the former tenure of good behaviour is

not necessary to the independence, integrity and purity of these the most important judicial officers in the State. Have I stated the case too strongly? Have I not stated it fairly and according to the facts? Do you not find your committee on the 5th article, headed, as it is, by one of the most eminent jurists of the age, recommending to the Convention to adopt this dangerous tenure for years, in our most important judicial department? And do you not find the Convention acting on that recommendation, and adopting this much abused tenure? Unless I mistake the case—unless it can be shown clearly that justices differ, essentially, in the character of their duties from judges, and are not exposed to the same, or as great temptations, then it appears to me that here is a point gained of great value, and that the first and most important step, in reforming our judicial department, has been taken, under the direction of the learned delegate from the city, and in direct contradiction of the argument which he has addressed to us.

But to the judges. The judiciary of Pennsylvania, as an existing establishment, consists of the courts mentioned in the section I have read, and some others which have been established by law since the adoption of our present Constitution. To all these Constitutional courts, judges are appointed "during good behaviour," which is, virtually and in practice, a tenure for life. Notwithstanding the gentleman from the city complains that "life offices" is an opprobrious and a false name, invented to increase the unpopularity of the judicial tenure, still I think the people have made no great mistake in adopting it, and that it will be found on examination to be strictly accurate. Let us examine it. What does a "good behaviour" tenure mean? If it meant, what the words import, that a man should cease to be a judge, when he ceased to be of "good behaviour," there would not be much cause for complaint, and a judgeship would rarely prove to be a "life office," but the expression, as a tenure of office, is to be taken in connection with the modes, provided by the Constitution, for enforcing good behaviour, and terminating the tenure. These modes are two. Removal by the Governor, on the address of two thirds of each branch of the Legislature, for any cause, not sufficient ground of impeachment, and by impeachment, which requires two thirds of the Senate for the purpose of convicting.

As to the power of removal, it is seldom successful when resorted to. If the attempt be made to remove a judge, all the means which he can employ, himself a powerful man perhaps, and all that his powerful friends can bring to his aid, are put in requisition to avert the shaft of justice. If the House of Representatives concur in addressing a Governor, there are few judges who, with all their friends, cannot operate sufficiently on the sympathies of at least twelve Senators to save them. But if two thirds of each House do address the Governor for a removal, the Governor may act his pleasure in the premises, and, in the one stage or the other of this proceeding, political alliances, family influence or official sympathy, are almost certain to defeat the attempt at a removal of the judge. And this proceeding is always embarrassed with an attempt to disprove the existence of any ground for removal, or else to prove that it is cause for impeachment; and it has, I believe, settled into an axiom that you can not remove a judge for matter which is cause for impeachment.

Impeachment is even more difficult. Here is room for all the quibbles

incident to a criminal trial; and, when the case is made out, a sympathetic Senate, looking to the unreasonable and destructive consequences, which, under our Constitutional provision, must follow a conviction, can hardly be expected to convict any ordinary offender. The rule of law is, that a judge can only be impeached for matter that is indictable, and until he has become a fit subject for the penitentiary, there is no prospect of terminating his good behaviour tenure by impeachment. Both these modes have been found, in practice, ineffectual for the relief of the people from bad judges, and they may be regarded almost as a dead letter in the Constitution. They are, as Thomas Jefferson pronounced them years ago, less than a scare-crow. A judge may indulge all the worst passions of his heart, to an extent sufficient to sate any ordinary appetite for mischief, before he finds the length of his tether, and becomes liable to an effectual prosecution, in either of the modes provided for terminating this tenure. Experience has abundantly proved that they are inoperative and ineffectual, except in exceedingly gross cases, when the laws of the land, in the hands of a jury, would answer all the purposes of an impeachment. How then is the "good behaviour" tenure to be terminated by any Constitutional limit? There is none that is effectual—there is none on which the people can rely. Are they not right then in calling this a life tenure? They have not misjudged, they have looked into this matter, and understand the substance of the thing, and they have committed no misnomer in calling these life offices. As to hard names, Mr. Chairman, I do not think the gentleman from the city ought to complain of any party, for he belongs to one that does not hesitate to apply opprobrious epithets to those who oppose it. I repeat, that no injustice is done to the good behaviour tenure, when the judicial office is called a life office;—it is strictly so,—and it is far from being true, that the friends of a limited tenure, if they some times call hard names, have adopted this term by way of reproach. It has been adopted, because it is descriptive of the thing and the fact. But all parties use hard epithets sometimes against their opponents. When the gentleman alludes to the use a party has made of hard names, he ought not to forget that there is now a party in the country engaged in denoucning large masses of their fellow citizens as "lo-co-fo-cos"—"agrarians" and "radicals," because they do not advocate what that party is pleased to esteem the genuine principles of the Constitution.

The question now presented, is, shall this tenure for life or good behaviour continue in our judicial commissions, or shall it give place to a tenure for a definite and prefixed period of years? The reports of the committee comprehend various other matters and details, as to the time and mode of appointing judges, their salaries, &c. but the main question, and the only one to which he should give any attention at this time, was, that he had just stated relative to the judicial tenure. It is objected to the amendment, and this is the pivot on which the whole of the gentleman's argument turns, that the independence of the judges is absolutely essential to the liberty and welfare of the people, and that this independence will be endangered or sacrificed, by reason of the amendment. And the gentleman went into an historical account of the good behaviour tenure, as it existed in England; and then gave an account of its Pennsylvania history, for the purpose of illustrating its fitness and necessity. Sir, in many things I agree with the learned gentleman. I agree that all attainable independence is necessary for the judges, and perfectly do I agree

with him that a dependent, profligate and corrupt body of judges, is the greatest calamity and curse that can befal a people. On this subject I trust there are no where two opinions. But I mean to show before I conclude, that the amendment will promote a just and real independence on the bench, and that a judge will be pledged to good behaviour by new ties under the limited tenure. What is meant now by the independence of judges? What does the gentleman mean when he speaks of the independence of the English and Pennsylvania judges? Prior to the reign of William III, the judges were appointed "*durante bene placito*" during the good pleasure of the king. The judges, were merely executive agents or commissioners of the reigning monarch, and the willing instruments of his ambitious policy or bloody cruelty. English history is full of the enormities which were practiced by the judges in the state trials of some of the purest patriots England ever had. It was this miserable judicial tyranny that sent Lord Russel, and Algernon Sidney, and a host of other martyrs, to the block, and which hastened the revolution of 1688. Whatever sentence the crown desired, judges pronounced, without reference to the testimony, or the rights of an appointed victim. From this frightful condition of things, the revolution, and the statute of William III, chap 2, passed in 1701, rescued the English subject. By this statute, the tenure was changed, from the pleasure of the king, to that of good behaviour. This made judges *independent* of the king, and was an immense acquisition to the liberties and security of the English subject. But was not independence of the crown, all that was effected by the introduction of the good behaviour tenure into English commissions? It contributed nothing to their independence of those influences which are so much dreaded in this country. From the time of William III, down to the reign of George III, the commissions of judges expired on a demise of the crown, but, by a statute in the first year of the last named monarch, their commissions were continued, notwithstanding a demise of the crown. This is all, I believe, sir, which has been done for the independence of the judiciary in England: and, although it is much, it amounts to nothing more than to make the judge independent of, and wholly irresponsible to the crown. He is not in any degree independent of the people. To them, more than ever, the good behaviour tenure made him responsible, for it is their power only that can now reach him, or affect him. And the people can, acting by their representatives in parliament, remove him at their pleasure, withhold his salary, or abolish his courts. Aye, sir, a mere majority of the two houses of parliament—the ordinary law making power of England, may remove any judge from office, the moment he ceases to be acceptable to the people; so that the good behaviour tenure means something there—and there is appertaining to it in England a responsibility, a wholesome responsibility to the people. But how stands the case here? We have no tyrant monarchs to make supple instruments of our judges—here there is no crown influence to which our courts can become subservient. So far, therefore, as the good behaviour tenure was intended to promote the independence of English judges, it was well designed, but it has no application to us. The only independence to which it contributes in England is independence of the crown, and here we have no crown nor any central, all controlling influence, which stands for the crown. The systems of the two countries are entirely dissimilar, insomuch that the "*independence of*

judges," when predicated of the English judges, conveys a specific and definite idea, which cannot be conveyed by the same phrase predicated of our judges. We have no need of just that independence which the "good behaviour" tenure secured to English judges. Here our only sovereign is the people, and they do not deem it necessary to do any thing in England to make their judges independent of the people. Yet here, popular influences are dreaded, and we are told certain of their servants must be made independent of the people, or all the mischiefs will ensue which have characterized a dependent and corrupt judiciary in other countries. What does the sought for independence of judges mean in Pennsylvania, if it be not irresponsibility to the people? What, but this, can it mean? And is this the English idea of an independent judiciary? Far, far from it. On the other hand, their example teaches us, that all necessary independence consists perfectly with direct responsibility to the people. How the extension of some degree of this responsibility to our judges is to destroy their independence, has not yet been so demonstrated that I am able to comprehend it. When the phrase *independence of judges* is employed, as an argument against the limited tenure, gentlemen do not mean, I presume, a moral quality of the man which is to be weakened and destroyed; but I suppose they allude to some political influence which may operate on the hopes and fears of the judge and sway his judgment, and of which he should be preserved in a state of independence. What is that influence? Whence comes it? If from the people, then it is *irresponsibility* to them which the good behaviour tenure secures to the judge, and which gentlemen are so desirous to perpetuate. *Judicial irresponsibility*, and not independence, properly understood, is the fruit of this tenure under our system of government. Whether absolute irresponsibility in any of the officers of a republican government be consonant with popular rights, wise, just or expedient, shall be a subsequent inquiry. I proceed now to notice another observation of the gentleman from the city. He informed us with peculiar emphasis that this good behaviour tenure originated in Pennsylvania—that it had its origin in the palmy days of Pennsylvania democracy, and that we and the world are indebted to our Pennsylvania ancestry for this principle.

In support of his position, the learned delegate referred us to the charter of 1683, granted by the proprietary to the people of Pennsylvania, but he did not read any part of it, or name the section which he relied on. I have examined that charter, or frame of government, and have it before me. The only section relative to the tenure of judges, is in the following words:

"That from and after the death of this present Governor, the principal council shall, together with the succeeding Governor, erect, from time to time, standing courts of justice, in such places, and number, as they shall judge convenient for the good government of the said province and territories thereof; and that the provincial council shall, on the thirteenth day of the second month then next ensuing, elect and present to the Governor, or his deputy, a double number of persons, to serve for judges, treasurers, and masters of the rolls, within the said province and territories, to continue so long as they shall well behave themselves in those capacities respectively," &c.

It will be perceived that the language of this section is "*from and after the death of this present Governor*," courts were to be organized and judges appointed in the manner therein provided. No present arrangment was made, different from the established system, according to which, at that time, judges were appointed for a period of years. Well sir, William Penn, was then "this present Governor," and he lived until the year 1718, so that according to the authority to which we have been referred, the good behaviour tenure of judges was not to come into being and actual application, until after 1718.

But it will be seen that this frame of government contained a provision for its own repeal or alteration, and according to that provision it was given up, repealed and destroyed in the year 1700, and the succeeding year. Another charter was given, which made no change, either present or prospective, in the judicial tenure. This charter of 1701 recites the facts.

"And whereas, for the encouragement of all the freemen and planters that might be convened in the said province and territories, and for the good government thereof, I, the said William Penn, in the year one thousand six hundred eighty and three, for me, my heirs and assigns, did grant and confirm unto all the freemen, planters and adventurers therein, lives, liberties, franchises and properties, as by the said grant, entitled. The frame of the government of the province of Pennsylvania, and territories thereunto belonging in America, may appear; which charter or frame being found, in some parts of it, not so suitable to the present circumstances of the inhabitants, was in the third month, in the year one thousand seven hundred, delivered up to me, by six parts of seven of the freemen of this province and territories in General Assembly met, provision being made in the said charter for that end and purpose.

"And whereas, I was then pleased to promise, that I would restore the said charter to them again, with necessary alterations, or, in lieu thereof, give them another better adapted to answer the present circumstances and conditions of the said inhabitants; which they have now, by their representatives in General Assembly met, at Philadelphia, requested me to grant. Know ye," &c.

Thus it appears that the good behavionr tenure was a thing contemplated in 1683, but that it never had any existence except as a prospective arrangement, and that eighteen years before it was to go into effect, the charter containing the prospective arrangement, "being found in some parts of it not suitable to the present circumstances of the inhabitants," was given up by the people, and superceded by another plan of government more suitable to their views and wants.

Before 1683, the judicial tenure was established by various charters for a term of years, and the repeal of that of 1683, revived the former provisions, by virtue of that familiar principle that, when a law which repeals a former law, is itself repealed, the former law is restored. Indeed, it does not appear from the history of the province, or from the terms of the charter of 1683, that during the existence of that charter, any other than the limited tenure prevailed; and never, for a moment, does the good behaviour tenure seem to have been an existing operative system in Pennsylvania, until it was established in our present Constitution, by the Con-

vention of 1790. So far as I have been able to ascertain our early history, no judge was ever commissioned during good behaviour, till after the adoption of our present Constitution. In what sense then is it true that this tenure had its origin in the palmy days of provincial democracy? What knew the people of its principles and operations? Nothing, absolutely nothing. If the gentleman referred to the primitive democracy of the State, for the purpose of showing that we proposed to violate a principle which was established and cherished by them, he has failed of his object, for they never, in their palmiest days, enjoyed the blessings of this tenure. No sir, it was imported into Pennsylvania, from England, by the Convention of '90, without due regard to the difference in our polity and circumstances from the mother country. But suppose Penn had adopted it, could it furnish any argument for it after our independence? He was the Deputy of the King, and his judges were English adventures to whom his favor was as important in many respects, as that of the King was to some of his own judges. There existed the same reason, in principle, for making the provincial judges independent of the Governor, who was sole disposer of events here, as there did for placing the judges on a footing independent of the crown in England. And if the people, not knowing who might succeed Penn, did desire and obtain a provision which might make their judges independent of the influences of his successors, it proves nothing in favour of our present judicial irresponsibility. But such provision if obtained, existed only on paper and never had effect.

Following up our provincial history, it will be seen that judges were appointed by the successive Governors, in all cases, either during pleasure, or for a period of years, until the time of our independence. Arrived at this period, it is proper to pause for a moment, and survey the state of things that led to the adoption of our first Constitution in 1776.

The people were about to throw off their Colonial bondage, "and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitled them"—the flame of patriotism (to use the language of the council of censors,) never burned purer or brighter than it did then—and genuine, rational liberty found a votary in every patriot of the colony. Independence was declared, and the work of defending it already entered on, when the people of Pennsylvania, with Franklin at their head, proceeded to form a Constitution. Allow me to say, sir, that that Constitution is deeply imbued with the principles of its birth day, and well worthy of the philosophical patriot who had a large share in framing it, and of whom it is beautifully said "He snatched lightning from the clouds, and the sceptre from tyrants."

The Convention met on the 15th July, 1776, and adjourned finally on the 28th of the succeeding September. To show you, sir, that that Constitution was the offspring of the warm and ardent patriotism which glowed in every bosom at that day, I read you a resolution of the Convention.

"We the representatives of the freemen of the State of Pennsylvania, in general Convention assembled, taking into our most serious consideration the clear, strong, and cogent reasons given by the honorable Continental Congress, for the declaring this, as well as the other

United States of America, free and independent, do thereupon resolve, and be it hereby resolved and declared, that we, in behalf of ourselves, and our constituents, do unanimously approve of the said resolution and declaration of Congress, of the 4th instant, and we do declare before God, and the world, that we will support and maintain the freedom and independence of this and the other United States of America, at the utmost risk of our lives and fortunes."

Here were the principles on which that Convention set out, and here is their pledge before God and the world, that they would do nothing to impair or endanger the great and eternal principles of liberty, set forth in the declaration of Congress, on the 4th of July, preceding. What then do you find in the action of that Convention, on the subject under consideration. If the good behaviour tenure existed at all in Pennsylvania, they rejected it—if it did not exist, they refused to adopt it. We may fairly infer that they deemed such permanency of office incompatible with these principles, to the maintainance of which they had pledged *their lives and fortunes*—they repudiated life offices, and placed judges on a tenure of seven years. Mr. Chairman, those men, without whom we should not now be enjoying the privilege of re-examining the principles of a free Constitution, were content to trust themselves, their children, and property, to judges appointed for seven years. The good behaviour tenure was then in being in England, and the framers of the Constitution of 1776, must have known it, but they saw that it was unfitted to our condition and uncongenial to our principles. They did not therefore import or adopt it. Am I mistaken, sir, in supposing that this is high authority against that tenure? I claim it, and appropriate it to my argument. I plant myself on this rock of the revolution, and declare, on the authority of that august body of patriots, that the good behaviour tenure is not necessary to a just independence of judges, in a republic. Let him shake the authority who can.

That Convention also decided to elect justices in limited numbers, and for a limited period, much in the manner we have already agreed to do. It was a full Convention, representing the people more thoroughly than did the Convention of 1790, and we are bound to revere its authority in a question of principle, not only on account of the characters of the men who composed it, but because, "we recollect it was formed with "great harmony, at the most auspicious period of time, when the flame "of patriotism shone brightest, when the good people of the State were "impressed with no other idea, than that of acquiring and maintaining "to themselves and their posterity, equal liberty, when no factions were "formed with ambitious or mercenary motives."

It is not my intention to say that that Constitution was entirely free from errors. The Legislature consisting of a single branch, was an undoubted and perhaps its chief error; but the great principles of civil liberty were deeply and firmly laid in it, and it carried us successfully through the war of our revolution, and the trying scenes which ensued on its termination—it imparted to Pennsylvania the first grand impulse she ever felt in her prosperous and glorious career, and deserves to share with the Constitution of '90, the praises which it is so fashionable to lavish on the latter, as the cause of all our present greatness.

But, sir, after peace was restored, and wealth and luxury began to in-

crease in the country, parties sprung into existence, who thought the government was not sufficiently strong and concentrated. A long struggle ensued in the council of censors, on the question of a new Constitution, and gentlemen, who will consult the record, will see which way the democracy of that body inclined. The admitted defects of the Constitution of '76, aided the argument against it, and a Convention was at length called on short notice, consisting of comparatively a small number, who, instead of reforming the defects of the old Constitution, proceeded to establish a new one; taking from the people the choice of many of the officers, whom previously they had elected—building up a powerful and single Executive, and incorporating the odious principle of life offices. Thus was our present Constitution established, and the good behaviour tenure, for the first time, introduced into Pennsylvania—a Constitution which was never submitted to the people, nor by any direct vote of theirs approved, and which they have been laboring to reform, almost incessantly, since the operation of some of its principles began to be seen and felt.

Having thus imperfectly passed over the history of this judicial tenure, in England and Pennsylvania, I come now to speak of an argument which has been drawn from the Constitution of the United States and pressed on us with great fervor. I think it will be seen that there are reasons for a permanent tenure in the federal judiciary, which do not apply to ours; and, that we may not set too great value on the example of the federal Constitution, it will be necessary to advert to some of the peculiarities of its judiciary. The judiciary of the general government is invested with large political powers, and can, in many instances, control and defeat the action of the other departments of government, as well as that of sovereign States. By the second section of the third article of the Constitution of the United States, "the judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof, and foreign States, citizens or subjects;" and, by the eleventh Article of the amendments, this power is so modified as not to extend to any suit against one of the States by citizens of another State, or by citizens or subjects of any foreign State. On the 24th of September, 1789, Congress passed an act, commonly called the "judicial act," establishing the courts, and distributing and defining their powers. And though these powers are often exercised in mere questions of *meum* and *tuum*, yet they not unfrequently rise to higher objects. Sometimes annulling the deliberate action of the other two departments of the government, the Executive and the Legislative; sometimes defeating the treaties which the President and Senate have agreed on—sometimes disposing of delicate questions in reference to ambassadors and public ministers, on which the peace of the nation may depend—and sometimes nullifying the acts of sovereign States which have received the solemn sanction of all the constitutional powers of

such States, the Legislature, Executive and Judiciary. Why sir, if it be necessary to invest a body of men with such powers in the supreme government of this country, they ought to be, as far as the tenure of their office can enable them to be, independent of the other departments and the States whose acts they review and reverse. That is to say, the frequent termination of their commissions, whereby they would be left to the mercy of the President and Senate, might, in times of high political excitement, cause great injustice to an upright judge, and be attended with the worst consequences to the country. We have already seen such times, and will doubtless see more occasions, when the duties of the federal judges will be in direct conflict with some cherished policy of an administration, or some favorite object of one or more States—restraining, expounding, or reversing their acts and measures, according to the ideas those judges may entertain of the Constitution. And their decisions are final. From them there is no constitutional appeal. Every State of this confederacy is bound by the exposition which this high power is pleased to give of its own Constitution, and where they pronounce a constitutional provision void, which the people of a State have adopted, no matter how maturely or unanimously, it is void; and, according to our complicated system of government, their judgment is final and binding on all men. The Senate is composed of men who represent the sovereignty of these States, and, in view of their high duties are often opposed to what such States may deem their rights and best interests;—need I say it would be unwise to bring the judges periodically under the hand of the Senate?—That they should be as permanent and independent in their offices as may consist with a faithful discharge of their duties? And that, leaving them subject to impeachment, to be decided by the Senate, was as much as, considering their position in our system, and their high and delicate duties, could be required, without defeating the objects of their establishment? Accordingly, you find no power of removal by the President, on the address of both Houses of Congress, similar to that in our Constitution. It was withheld, because it would have been inconsistent with the duty of reviewing the political acts of the other departments.

Now, sir, do you not see reasons for the good behaviour tenure in the federal judiciary, which do not apply to ours? Cogent and adequate reasons? Is there not that radical difference in their Constitution, and duties which justifies a distinction in their tenure? Franklin, who was at the head of our Convention of 1776, was in the federal Convention of 1787, and set his seal of approbation to the good behaviour tenure for the federal judiciary, though he had repudiated it for the State judiciary. Did he do this, did Franklin ever act, without a reason, and a good one? And Washington, to whom the gentleman from the city has paid so beautiful and touching a eulogy, and all the patriots who signed that Constitution, and others who approved it, all concurred in the necessity which existed for placing the federal judges on a permanent footing, and which necessity I admit, but say it is peculiar to them and does not exist in our Constitution.

If sir, I had had the great honor of sitting as a member in that Convention, looking to the judiciary as a co-ordinate department, and invested with the peculiar powers at which I have glanced, I should, beyond

doubt, have voted for the good behaviour tenure; for I should have believed, that such over-ruling necessity had been created as to justify a departure from the more republican system of short tenures.

But, sir, what have we in the Constitution of our State judiciary to justify the principle, proper enough in the national judiciary. The duties of our judges are exclusively judicial, and do not partake at all of a political character. They possess not, by any express grant, the power even of pronouncing an act of the Legislature unconstitutional in a clear case. It is true they have assumed it, or rather, they have decided they will assume it, when such a case is presented, though they never have yet ventured to exercise it, and the strong mind of our present Chief Justice has furnished objections against the exercise of this power in any case, which it is not easy to answer or overcome. See Eakin and others vs. Raub, and others, 12 Sergeant and Rawle's Reports, p. 344.

They are mere ministers of justice between man and man, and have no powers of correspondent character and magnitude with those which, we have seen, are devolved on the national judges, by the Constitution and laws of the United States. If, under that Constitution and the laws of Congress, the federal judges were charged merely with the administration of distributive justice, I should see no reason for the permanent tenure of office they now enjoy. The reason failing in our own judicial establishment, it becomes us, I think, to conform our judicial tenure to the republican character of our institutions.

I proceed now, Mr. Chairman, to state some views and reasons favorable to a change of this tenure in the commissions of Pennsylvania judges. Our Constitution distributes the powers of government, among three great departments—the Legislature, Executive and Judicial.—RESPONSIBILITY TO THE PEOPLE is every where written on the first two. Whoever enters either of these departments is taught that all office is a trust for the people—that it must be surrendered at short intervals, so that the people may confer it on others, if the trustees cannot render a satisfactory account of their stewardship. From the first hour of our independent political existence, this principle of official accountability has been recognized and asserted. In our first Constitution to which I have heretofore referred, you find it asserted, not as an abstract proposition, but as a living and governing principle which pervades every republican government.

"All power being originally inherent in, and consequently derived "from the people; therefore all officers of government, whether Legis-"lative or Executive, are their trustees and servants, and at all times "accountable to them. That government is or ought to be instituted for "the common benefit, protection, and security of the people, nation or "community, and not for the particular emolument or advantage of any "single man, family or set of men, who are part only of that com-"munity; and, that those who are employed in the Legislature, and "Executive business of the State, may be restrained from oppression, "the people have a right, at such periods as they may think proper, to "reduce their public officers to a private station and supply the vacancies "by certain and regular elections."

These principles lie at the base of all our political institutions. They were the cloud by day and the pillar of fire by night which guided ur

patriot fathers through the wilderness of the revolution, and conducted them to the Canaan of Independence. It was these and kindred principles that made that revolution. And see, sir, how fully and faithfully these principles were carried into practice by the Constitution of '76, not only in reference to offices strictly executive and legislative, but judicial also. The longest official term of service established by it, was assigned to the judiciary, but this only seven years. And our present Constitution carries out these principles, in regard to the two first departments of the government, though it drops them short of the other. One branch of the Legislature is required to surrender their trust annually, the other once in four years, which we have changed to three. The Governor is permitted to hold but three years, before he is brought to a strict account, and rewarded with a re-election or left a private citizen according to his deserts as a public steward. Short terms of office and strict accountability are found to be the true *conservative* principles of the body politic, and this is the lesson taught us both by the precept and example of the founders of our republic.

If official responsibility be necessary in the legislative and executive departments is it to be scouted from the judical? Do these great conservative principles become by applying them to the judiciary, disorganizing, jacobinical, loco-foco, destructive? The men of that day, when "the flame of patriotism never burned purer," thought not so—the majority of this Convention thought not so, when they placed the most important branch of the judiciary, the justices, on a limited tenure. And let it be remembered that we have gone back with the justices to the ground of '76—then they were elective—the Convention of '90 made them appointable and we again make them elective—then they held for a period of years—the Convention of '90 gave them this indefinite tenure of good behaviour, and we again reduce them to a period of years. We are struggling to get back to the first principles from which we ought never to have departed. We advocate no novelties, we abjure all rash experiments. We ask only for the principles which first made us a nation and gave us liberty. We ask for a republican, responsible and accountable government, in all its parts. "Government was instituted for the common benefit, protection and security of the people"—it is a trust, and all who are employed in its administration, are servants of the people. Let the people then have the control of government, and let all their servants be accountable to them. How else, sir, are you to attain the great ends of government, the common benefit, protection and security of the people?

But, how are you to make judges in some degree accountable to the people? Abolish their life tenures, and let them be appointed for a period of years. The Governor and Senate are representatives of the people, accountable to them, and their ears are always open to the public voice; and they are to re-appoint the judge whose term has expired, or to appoint another in his place. Here is opportunity for the test. Has the judge been of good behaviour among you—has he held the scales of justice firmly and fairly—has he administered the laws faithfully—has he served you acceptably? are questions which the Governor and Senators will ask, and the people will respond in memorials and remonstrances.

This is a test which the judge will have steadily before his eye all the time he sits on the bench, and, sir, will he dare to be partial? Will he dare to become a political brawler? Will he dare to violate sound morals, and the law whose minister he is? Will he neglect his books and bend the energies of his mind to the acquisition of wealth? Will he by sluggishness, indifference or intemperance, delay justice? Finally, sir, will he not be pledged to independence, industry, fidelity and uprightness, in the discharge of his duties, by the strongest motive which the human heart acknowledges—self-interest?

What would you say to a Governor for life, or for "good behaviour," without any adequate and effectual power of removing him. It might be argued that he would go into office by the consent of the people, and if he was a good officer, he ought not to be sacrificed and turned out after a brief service—that he had quit his profession or business, to take the office, aud it would be unjust to take it from him; and above all, that a short term of office would destroy his independence and integrity, by reason of his anxiety for a re-election. But, the gentleman from the city admits the Governor ought not to hold during good behaviour. And why not, except on the principle of responsibility to the people? and can he shew that there is any less reason for holding a multitude of judicial officers to this responsibility, than there is for holding the Governor?

We have been told by the learned gentleman, that the people have given the name of life office to this good behaviour tenure, as a term of reproach and that laws, as well as dogs, may be injured by a bad name. But, do you find any body raising the cry of "*mad dog*," against your Governor or Legislature, or any of the offices of the government, who are under a just and healthful responsibility to the people? Why is it that this department alone, in which this tenure obtains, is subject to the reproaches of the people?

Mr. Hopkinson here rose and explained that he had not said "*the people*" had used this term as reproach, but that certain persons, who were mis-leading the people had called the judicial tenure by this bad name. He had not spoken of the people.

Mr. Woodward resumed. No, the gentleman's remark was that the term had been taken up by the rank and file, and repeated by those who did not understand its signification. And a sorry compliment, this, to the intelligence of any portion of our fellow citizens. Much as I respect the author of this sarcasm, I cannot subscribe to its propriety.

Mr. Hopkinson again explained. He was still mistaken, he said, by the gentleman. He had spoken of the rank and file of the *party*, and not of the people. He had distinguished between the party and the people.

Mr. Woodward resumed. Is there any portion of the people, who do not belong to some party. I dont know why it should be a term of reproach. The gentleman boasts that he belongs to the federal party, and every body belongs to one party or another.

But to return to the subject: The people, or a party of the people, if you please, distinguish the judiciary with a term of reproach—they

distrust it, and do not regard it with the same confidence and affection, that they do the other branches of the government. Of this I have no doubt, and why is it? Simply because it is beyond popular influence—clothed in irresponsibility and presents an exception to the republican principles on which the government is founded.

The people, or that *party*, are intelligent and observant; not an ignonorant soldiery passing a catch word down the rank and file, without knowing its meaning, but inquisitive, watchful and attentive to the principles of their government, and they understand, perfectly, the grounds of objection to this permanent tenure. Remove it from your Constitution, abolish these odious life offices, and rely on it, the popular confidence will return and embrace the bench, and we shall hear no more of hard names and bad names for the judiciary.

There is no such distrust and reproach of your Executive. True, the people become excited in elections of Governor, and each party predicts the certain ruin of the State, if the adversary candidate is elected; but when the "hurly burly's done," quiet is restored and discontent, if it exist, is smothered. Parties have had a fair trial of their strength, and all acquiesce in the decision of the majority. No man's confidence in his government is shaken, and though the acts and measures of his excellency are scrutinized and remembered, against a coming day of account, yet all are satisfied with the opportunity they are to have to hold him to a strict account.

As long as the people can hold an officer responsible to them, they feel that the office was established for their benefit, and will cherish and defend it, but if you wish to make them indifferent to a man, and distrustful of his office, give him a Pennsylvania commission during good behaviour. He is at once lifted beyond the sphere of their sympathies and wrapt in cold insensibility to their interests. They discuss not his qualifications or merits; it is in vain they approve or condemn his conduct. They cannot remove him; they can see no time when, by themselves or their representatives, they can question his honesty or his capacity—they look on his official existence with cold indifference, or are compelled to desire his death as their only chance of relief.

In the Convention of Virginia, Governor Giles insisted on this view of the case, and he proposed to give the Legislature the power of removing the judges, as the Parliament of England may do. He contended, that the people never would feel a proper degree of confidence in the judiciary, till it was brought within their reach, and made responsible to them.

Here Mr. W. read from a speech of Governor Giles, and gave way to a motion by Mr. Ingersoll that the committee rise, and the President having resumed the chair and the chairman reported;

On motion of Mr. Porter, the Convention adjourned to meet this afternoon at three o'clock.

MONDAY AFTERNOON, OCTOBER 30.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'SHERRY in the chair, on the report of the committee to whom was referred the fifth article of the Constitution.

The question being on the motion of Mr. WOODWARD, to amend the report by striking out all after the words "section second," and inserting in lieu thereof, the report of the minority of the committee.

Mr. WOODWARD resumed his remarks. The gentleman from the city relies on the example of the Federal Constitution; and this morning, I endeavored to shew that there was such a dissimilarity in the duties and objects of the two establishments, that no argument, in favor of the good behaviour tenure here, could be justly drawn from the Constitution of the United States; but, as the gentleman quotes great names, in support of the good behaviour tenure, I will offer him the authority of a man not inferior to the greatest name he has mentioned. I mean Thomas Jefferson. He was out of the country at the adoption of the Constitution of 1787, but after the amendments to it were adopted, he seems to have given it his approbation and cordial support. Long after, however, when he had retired from the excitements of political life, and when experience, observation and reflection had enabled him to form a more correct judgment on our political experiment, he held the following language of the federal judiciary:

"Let the future appointments of Judges be for four or six years, and renewable by the President and Senate. This will bring their conduct, at regular periods, under revision and probation, and may keep them in equipoise between the general and special governments. We have erred in this point by copying England, where certainly it is a good thing to have the judges independent of the King. But we have omitted to copy their caution also, which makes a judge removable on the address of both houses. That there should be public functionaries, independent of the nation, whatever may be their demerit, is a solecism in a republic, of the first order of absurdity and inconsistency." Such were the mature and calm opinions of this great man on the establishment of the good behaviour tenure even in the national judiciary; and surely there is less apology for it in our State Constitution.

Mr. Chairman, I am about to appeal to higher authority still—to the people of Pennsylvania. The gentleman from the city asserted, that the good behaviour principle had been unquestioned from the year 1790, and that he had never heard it questioned before he came here. If the gentleman had taken the trouble of consulting the record, he would have found that, in a few years after the establishment of this tenure in Pennsylvania, the people began to address the Legislature by petition and memorial for some mode of relief. Such petitions came in from various parts of the State, numerously and more numerously signed, as the good

behaviour tenure developed its influences to the public view—the current of public opinion continued to flow deeper and stronger into the Legislature, until at length in the session of 1811–12, resolutions were reported, recommending to the people an expression of their opinion on the call of a Convention. These resolutions assert the great fundamental principles to which I have adverted, and specify this good behaviour tenure as one of the violations of these principles which had been productive of much evil, and the occasion of great complaint. There seems to have prevailed in the Legislature a strong doubt whether they had power to recommend the calling of a Convention, or to meddle at all with measures leading to a reform of the Constitution, and it is quite probable that the failure of the resolution to which I have referred, is to be ascribed mainly to this doubt. The vote stood, 43 yeas for, to 45 nays against it—so that it was lost by a majority of two votes only. This was a strong expression of public opinion against some of the features of this Constitution, and particularly against these life offices, and it was given, not by an ignorant party, as the watchword passes along the rank and file of an excited soldiery, but by sober, staid and reflecting men, such as the two venerable republicans who sit just in front of me, (Messrs. McCall and Dickerson,) both of whom were in that Legislature and both voted for a call of a Convention. You, sir, (Mr. M'Sherry,) voted the other way, doubtless from motives equally pure and patriotic. Failing of their object in 1812, the people very soon renewed their suit, as the journals and the petitions shew, and in 1825, the pressure of public opinion had become so great that the Legislature yielded to its force, and passed an act for calling a Convention to amend the Constitution. The error of this law was, that it did not provide for submitting the amended Constitution to a vote of the people, and they had learned from the history of the Convention of 1790, that it was not wise to commit their fundamental law to the revision of any body of men, without retaining the power to affirm or reverse their proceedings. Accordingly, when the vote was taken for calling a Convention under that law, there was a majority against it. Still the sturdy republican yeomanry of Pennsylvania did not despair of reform—they continued to pour in upon the Legislature their complaints against your good behaviour tenure, and other abuses of our present Constitution, by petition, public meetings, and every mode in which popular opinion could display itself, till the law was passed for calling the Convention which we now compose—a main object of which measure was, as I firmly believe, to abolish these life offices which have become odious to the people and to which they never will be reconciled. Examine these petitions, read the proceedings of these meetings and you will see the strong, steady and unchanging condemnation of this tenure of office by large masses, whole communities of our fellow citizens. Is it enough to sneer at such authority, as the testimony of grog shop politicians, or of an ignorant and excited mob, led on by designing and unprincipled demagogues? No, sir, it is the voice of the people, which, if you deny or despise it too long, will assume a louder and more fearful tone, against which gentlemen cannot, however, they may desire to, shut their ears.

But, Mr. Chairman, there is another fact in this history to be mentioned. Simon Snyder came in as a reform Governor, and, from him down to the present day, there has not been a Governor elected to fill your executive chair, who was not more or less pledged to constitutional

reform; and the watchword and the cry of the rank and file of every party has been, "reform"—"reform"—"abolition of life offices"—"reduction of Executive patronage," and the "extension of suffrage." I appeal to the oldest man here, if every candidate for the Chief Magistracy, in all this time, has not been presented to the people as favorable to liberal constitutional reform, and if one of them has dared, *before the election*, to avow himself favorable to this aristocratic feature of our constitution.

Mr. Chairman, if I have apprehended the popular feeling of Pennsylvania correctly, in reference to this question, how is it that gentlemen, familiar with all our history, and observant of whatever has passed or is passing in the State, can assert that they never heard of this tenure being questioned and opposed. If they will open their eyes to the record, and cultivate some respect for the popular opinion, they will see clear traces of its dissatisfaction with this tenure; but, whatever others may think of it, I value this public opinion, founded as it is on the actual experience of an intelligent people, beyond all the musty records and great names which have been, or are to be, pleaded, in behalf of the good behaviour tenure. It is the sound sense of a republican people, remonstrating against that "solecism in a republic, of the first order of absurdity and inconsistency"—irresponsible functionaries. The people feel that the judiciary belongs as truly to them, and is as essential to their welfare as the other departments of their government; and that they may feel as secure under its influence, they wish to see it made, by some means and in some degree, responsible to them. It is not their interest or desire to have dependent and time-serving judges—they want an independent, faithful and responsible judiciary.

I proceed now, Mr. Chairman, to another objection to this tenure. It begets in the mind of the judge an idea of *property* in the office he holds. It has already been made a question in Pennsylvania, whether a commission granted for good behaviour could be superceded, vacated or annulled, without a forfeiture of the condition on which it is held. A commission is granted to a judge during good behaviour, that is just as long as by hook or by crook he can save himself from the operation of the removal and impeaching power. He gives up his business to accept it, and he brings into the office learning which it cost him years to attain. Here is a consideration, and the commission is a contract, it has been said; and a judge is very apt to persuade himself of this doctrine, for when

> "Self the wav'ring balance shakes,
> It's rarely right adjusted."

He feels that he has purchased the office with a price, and that he has a property, an estate in it—that it is his, and that a Convention of the people, and no power in the State, can of right take it from him. These permanent offices are, in their nature, calculated to foster and cherish this wrong feeling, and to induce a forgetfulness that the office is a sacred trust, and the incumbent a servant and trustee only of the people. If this feeling be not checked, the judges will by and by decide themselvs to be the owners of the office, and then we may expect it to acquire another quality of property—to become inheritable; and we shall find it descending from father to son, though the son may be a rascal or an idiot.

The germ of a judicial aristocracy is planted in your Constitution; and if we do not return to right principles, God only knows how soon it may spring up, and overshadow this goodly land.

Sir, the people are sagacious enough to see the danger—they know and feel that this tenure is tending to an aristocracy—they feel that it ought not to belong to an office established for their security and convenience—*for the protection of their property—for the redress of their wrongs—for* the vindication of their rights.

Again, sir, I have another objection to this tenure. Power long continued in the hands of any man, however pure and upright when he first succeeds to it, makes him despotic, tyrannical, overbearing and disgusting to the republican sense of the people. I agree with the gentleman, that our judges have no political power, but the power, whatever you call it, which they exercise over the property, reputation and rights of our citizens is immense, when it is confined within the strictest rules of law; but when it takes latitude, for the purpose of attaining a result on which a haughty and imperious judge has set his heart, it becomes frightful. It may be the weakest arm of the government *politically*, but no department is felt so sensibly and constantly by the people as the judiciary. While I am on this subject, Mr. Chairman, allow me to gratify the Convention with a beautiful and eloquent sketch of the power of judges, which I find in an address delivered before the Law Academy of Philadelphia, at the opening of the session of 1826–7, by Joseph Hopkinson, L. L. D., Vice Provost of the academy.

"A mind accustomed to acknowledge no power but physical force, no "obedience but personal fear, must view with astonishment a feeble "individual, sitting with no parade of strength; surrounded by no visible "agents of power; issuing his decrees with oracular authority, while the "great and the rich, the first and the meanest, await alike to perform his "will. Still more wonderful is it to behold the co-ordinate officers of the "same government, yielding their pretensions to his higher influence. "The Executive, the usual depository and instrument of power; the "Legislature, the very representative of the people, give a respectful "acquiescence to the judgments of the tribunals of the law, pronounced "by the minister and expounder of the law. It is enough for him to "say, '*It is the opinion of the court*,' and the remotest corner of our "republic feels and obeys the mandate. What a sublime spectacle! "This is indeed the empire of the law; and safe and happy are those "who dwell within it—may it be perpetual."

Such, sir, (continued Mr. W.) is the majesty and the power with which the law invests its ministers, and you give him an indefeasible title to it for life. If he be an ambitious and proud man, what kind of a public *servant* will he be, after wielding this power for fifteen or twenty years? Can the poor, the destitute and the friendless, approach him with confidence? Will his ear be open to their cause? Will his manners and bearing conform to the republican simplicity and habits of our people? These are practical questions; let every man's experience and observation answer them. Compare your life office holders with the other officers of the government. Look at the charges that have been preferred and *proved* against these judges, whom unsuccessful attempts have been made to remove or impeach; and then answer if the good

behaviour tenure promotes those qualities which all men approve and admire in public officers—integrity, gentleness and humility.

I put a case. I have before me an old paper giving the details of an outrage on law and public decency, by Judge Cooper, in the town in which I reside. I allude to the case of David Gough, a boy who was convicted of stealing a horse, in 1807, and I will trouble the committee with a few extracts from the paper—the "Luzerne Federalist," of the date of the 22d May, 1807.

"Wilkesbarre, April 10, 1807.

"At the court, held this week in town, three persons were sentenced "to the State prison, viz:

"Alfred Armstrong, a black boy, about sixteen years old, for burglary, "three years.

"John Johnson, about nineteen years of age, for burglary and larceny, "(two suits) two years.

"David Gough, a lad about fifteen, for horse stealing, three years.

"This lad pleaded *guilty*, and the court, in the first place, sentenced him "to one year's imprisonment. During the evening of the day on which "he had received his sentence, Judge Cooper, it is understood, heard "some reports against the general character of the lad, and the next "morning ordered him before the court. He appeared, and the judge "*altered his sentence*, and increased the time of his imprisonment from "*one* to *three* years. The boy was remanded to jail: when lo! it "appeared that his *second* sentence had been pronounced in a court of "common pleas, and not in a court of quarter sessions. This poor "fellow was a third time brought forward—a court of quarter sessions "opened, and Judge Cooper passed sentence *a third time upon him!* "and the last time, I am told, the prisoner was *in irons*.

"On Thursday morning, the sheriff started with the prisoners to Phil- "adelphia; whether any of them will be sent back again (as formerly) "as illegally committed, we do not *yet* know.

"During the sitting of the court, two men (one of whom was the "constable of Kingston) were hurried off to jail, for whispering, where "they were confined for some hours. This created great murmurs "among the people."

This, sir, is an unvarnished account, corroborated by the Judge's own statement in the same paper, of a transaction which is a disgrace to the age we live in. An English Jacobin comes over here with this English tenure—gets on to the bench as a president judge under this tenure—and having sentenced a boy adequately for the only crime he stood indicted for, he goes off the bench and gathers some town gossip about the lad which he makes, the next day, the occasion for another sentence of two years to the penitentiary, additional to that already inflicted. And his honor was so fierce for his victim that he pronounced the sentence the second time in the court of common pleas, and then had to expose the boy to the shame and mortification of a third sentence. Young Gough had been indicted for nothing but stealing the horse—the offences for which the second and third sentences were pronounced, had not been charged against him—he had not been called on to answer for them—he

had not been convicted of them—there was no proof whatever offered to the court—Gough did not know for what he was sentenced. What had become of his constitutional right to a fair trial according to the form of law? It was in full existence, and Judge Cooper had sworn to support that constitutional right; but he violated it, flagrantly, shamelessly, criminally, and yet he was not impeached or removed for it. His judicial vices flourished for four years more under the good behaviour tenure, before they became rank enough to expose him to the removal power of the Constitution.

Now, sir, gentlemen may talk of enormities practised under Cromwell or any other tyrant as they please, we have in this instance, and it is far from being the only one in Pennsylvania, as pure a specimen of tyranny and oppression, protected and shielded by this good behaviour tenure, as you can find any where. What would that boy and his friends think of the laws and justice of the State, which permitted him to be hurried off to a penitentiary by a violent judge for two years, as the penalty of offences of which he had never been informed, for which he was never tried or convicted? He may have had a father to sympathize in his sufferings, or he may have hoped that after a year's confinement, he would be restored to society to become an honest man; but what cared an irresponsible judge for the sympathies and feelings of a parent, or the hopes which animated the victim. That judge could gratify the vindictiveness of his nature on a poor and destitute boy, because he was answerable to nobody—his commission was not about to expire when public indignation and justice could protest against its renewal—he stood during good behaviour, and, but for other misdemeanors than this, might have been on the bench still.

Nor is Judge Cooper a solitary instance of judicial oppression and tyranny in our history. There are other instances, and, considering the influence of this tenure on human nature, it is wonderful that more examples of wrong and outrage have not been witnessed.

In regard to judges generally, I ask Mr. Chairman, if the first few years of their service are not distinguished with a more faithful and acceptable discharge of their difficult duties, than the advanced periods of their official existence. If they do not grow intolerant and overbearing, under the immunities of this tenure, do they not, in many instances, become indolent and inattentive to their business. Feeling perfectly secure of their places, what if they neglect all professional reading, and give whatever energies of mind they have to other pursuits and objects—to speculation or politics? The effects of the ignorance and arrogance which this tenure promotes, are seen in the mistakes constantly occurring in our inferior courts—in judges attempting to control the decision of facts by the jury, thus virtually abolishing trial by jury —in substituting crude theories for settled principles of law, and in sending up case after case to the superior court, to be reversed, to the delay of justice, and the ruin of parties. How few of them, sir, ever read, or if they do, remember and exemplify the maxim of Lord Bacon, that "Judges ought to remember that their office is *jus dicere* and not *jus dare;* to interpret law, and not to make or give law—that they ought to be more learned than witty, more reverend than plausible, and more advised than confident—and above all things that integrity is their proper portion and virtue."

The Constitution makes the jury, in criminal cases, judges of the law and the facts, and, in all cases, they are the exclusive judges of the facts. The judge transcends his duty, and violates his oath, who undertakes to dictate their verdict on the facts, or by strong intimations and significant hints to control their judgments. The English judges are not sufficiently independent to dare to do this. It is only in Pennsylvania that a judge may with impunity invade the province of the jury, and overawe and control their judgments, or set aside their verdict till one is obtained which is satisfactory to him. Speaking, practically, of some districts in Pennsylvania as they *have been*, I may say that the rights of property and of persons have, in many instances, been made to depend on the whim, caprice, passion or prejudice of a single man, instead of depending, as the Constitution and laws intended, on the judgments and consciences of a jury. Now that many of these and kindred evils are chargeable to the good behaviour tenure, I have no doubt. I do not expect perfection under any system—I know that to "err is human," and I am not prepared to say that all existing abuses will be corrected by the limited tenure, but I believe firmly that a wholesome and effective responsibility in our judges will increase the respectability of our judiciary and the security of the citizens.

To this head is to be referred another evil. I mean the continuance of a judge in office, after he has become disabled, by causes beyond his control, from fulfilling its duties in a proper manner. If a judge do not become oppressive, arrogant, dictatorial, indolent or intemperate, he may be by disease or misfortune disqualified, not totally perhaps, but manifestly disqualified for a prompt and faithful discharge of his duties. What is to be done in such a case. Remove him, I shall be told, by the address of the Legislature. But who wishes to undertake so ungracious a task? And if it is undertaken, who expects that two thirds of both houses of the Legislature will turn a man out of office for the sake of a misfortune merely, when he is striving to discharge its duties. Ridicule, contempt and defeat, would be the almost certain consequences to any one, who should attempt to remove a judge under such circumstances, and, accordingly, the people of his district would endure him in uncomplaining silence. But such cases furnish no argument, say gentlemen, against the good behaviour tenure. They are local and occasional, and a great principle must not be sacrificed to accommodate such cases. I wish to know, sir, if any body esteems this a sound or just answer. Have not every portion of the people the same right to an able administration of justice? All contribute alike to sustain and defend the government, and why should not all enjoy, in an equal degree, its protection and blessings? If a principle of your Constitution is found to work injustice to a part of the people who have no relief, is it enough to say that the grievance is local only, and ought not to affect the principle. I say it ought to change the principle, for that is a bad principle which operates, for an indefinite period, to the prejudice of portions of your citizens, and if a better one can be devised we are bound to apply it.

Take our principle of a limited tenure, and see how it would work in this case. His commission is about to expire, the Governor and Senate know that he is notoriously incapacitated for the office, and that

his reappointment would make themselves unpopular in his district. The people add their testimony to the convictions of the Governor and Senate, and, another and a better judge is given to them. Thus you have a salutary reform where it was much needed, by the silent operation of this principle—without excitement or convulsion. And this purifying and renovating process will be constantly going on in the body politic, by the beautiful principle which I am advocating.

But injustice will be done to judges by turning them out of office, we are told. He may be a poor man and may have a family dependent on his salary. But is this a reason why he should hold an office against the consent of the people, which was established by themselves, for themselves. The error is, in mistaking the office for the property of the judge ; an error into which, I have said, the good behaviour tenure is very apt to betray us. The office is theirs' not his—established for *their* benefit, not *his*—our charities and our poor houses are all open to judicial mendicants, as well as others, but our offices must not be dispensed on principles of charity. It will not do to destroy the first principles of our government for the purpose of continuing any man, however large a share of our sympathies he may claim, in office, longer than he can fulfil its objects, and make it useful and convenient to the people. And when such cases as I have been supposing do occur, if none exists now, will your Constitution afford any relief? To what part of it may the people look for a remedy—on what one of all its provisions may they rely? The good behaviour tenure encourages no hope—the removal powers offer no relief or remedy. The people must look to the death of the incumbent, as the only event that can work a change favorable to them. What more natural than that they should denominate an office with such a tenure, a life office—and what more natural than that they should distrust such an office, and dislike such a tenure, as all the history of our people shows they have done. I do not mean to say that this tenure is offensive, on account of any peculiar and extraordinary faults in our judges. I believe sir, that, as a body, they are highly respectable, and that in learning, integrity and good behaviour, our judiciary may compare advantageously with any other in the country ; but the *tendency* of this tenure is to the overthrow of all of our most cherished principles, and it occasionally demonstrates its practical evil in perpetuating a man in power long after the sense and judgment of the public have discovered his unfitness. And, sir, if this evil is occasional, local and temporary, it is a grievous evil while it lasts, and we can hardly do the country better service than to devise and apply a proper remedy. I am willing sir, so to mould our institutions, as to avoid all sectional evils which may be done, without insecurity to fundamental principles, and will go for any measure to redress existing grievances, which may not occasion greater mischief in an opposite direction. I have said, the remedy we propose is no novel experiment. It was familiar to the founders of the government, and we have in our state now an example of its application, with what success, I hope will be testified by gentlemen who come from those parts of the state in which district courts are established. These courts have been established by law since the adoption of our Constitution, and although the Legislature might have endowed them with the good behaviour tenure, they have not done so, which is another indication of public opinion on this question. I understand these courts in Philadelphia, Lancaster and Pitts-

burg are well filled with able judges, though the longest tenure is but ten years and the confidence and satisfaction of the public in them are attested by the immense amount of business that is transacted by them. As far as these courts are concerned in the experiment of limited tenure, it has worked well. The Governor has had no difficulty in finding good men to assume office under this tenure, and I think all testimony will concur, that we have not a more independent and upright tribunal in the Commonwealth. The example of these courts is sufficient to put to flight the whole flock of fears and objections about insufficient appointments, under a limited tenure, dependent judges &c., and I confess myself unable to see why this tenure may not just as safely be applied to common pleas judges, as to district judges. But other states have adopted the limited tenure; and the good behaviour tenure does not prevail as extensively as the gentleman from the city seemed to suppose. In New Hampshire the tenure of judicial officers is variously regulated, but none hold longer than until they have attained seventy years of age; and all are removable by the Governor on the address of both houses (not two-thirds) of the Legislature. The following provision of that Constitution, relative to justices, is worthy of observation.

"In order that the people may not suffer from the long continuance in "place of any justice of the peace, who shall fail in discharging the im-"portant duties of his office with ability and fidelity, all commissions of "justices of the peace shall become void at the expiration of five years "from their respective dates; and upon the expiration of any commis-"sion, the same may, if necessary, be renewed, or another person ap-"pointed, as shall most conduce to the well being of the state."

In the state of New York, the chanceller, justices of the supreme court and circuit judges, are appointed during good behaviour until sixty years of age—judges of the county courts and recorders of cities for five years. But the court of final resort for the correction of errors, consists of the Senate, the chancellors and justices of supreme court: and the senators hold by a limited tenure and are elective.

The Vermont judges and justices are elected annually by the Legislature; and, notwithstanding the confident denunciation of limited tenure we hear in this place, I doubt if gentlemen could convince the Green Mountain boys, that their rights of person or property are not well protected, or that they would be more happy and secure under the benign tenure of good behaviour. Their Constitution is nearly half a century old, and it is wonderful they have not discovered the necessity for this permanent and irresponsible tenure, if it be so manifest as gentlemen seem to think it is.

In Connecticut, judges of the supreme court of errors and of the superior court hold, during good behaviour, till seventy years of age. All other judges and justices are appointed annually.

Rhode Island is still governed by the royal charter of Charles II., and that highly intelligent little state has never yet felt the pressing necessity for the good behaviour tenure, sufficiently to induce them to establish a Constitution and adopt this principle. They have always lived and still do under a judiciary elected annually by the Legislature. Some years ago a Convention was called, and a Constitution proposed, but the people rejected it and refused, by a large majority, to make any change.

In New Jersey, judges of the supreme court hold for seven years—the other judges and justices for five years. I shall have occasion to allude to the Jersey judiciary hereafter.

The Constitution of Georgia was adopted eight years after ours, and is peculiar in its judiciary organization. The judges of the supreme court are elected for three years, whilst the judges of the inferior courts and justices of the peace, are appointed for good behaviour—carrying the principle of responsibility into the higher branch of their judiciary, and not extending it to the inferior branches.

In Mississippi the judges of the high court of errors and appeals are elected for six years—the circuit judges for four years—the chancellor for six years—judges of probate and justices of the peace for two years.

In Indiana the judges of the supreme court, the circuit court and other inferior courts hold for seven years, and justices of the peace are elected for five years. It has been remarked, that the Governor of this state has lately been unable to procure a lawyer to take the office of chief justice. I believe the fact, but the reason for it is the inadequacy of the salary, which I understand to be contemptible, and not the limited tenure to which the gentleman was desirous of referring it. And here allow me to say, that if the limited tenure prevails in our Constitution, I hope the salaries of our judges will be raised. The policy and interests of the state will demand an increase of salaries, and it is to be hoped that no narrow views of an ideal economy will restrain the Legislature from doing it.

I come now to Ohio, the young giant of the west, whose rapid prosperity according to a mode of reasoning frequently adopted here, ought to be attributed, in part at least, to the wise Constitution which she enjoys. The judges of the supreme court, the presidents and associate judges of the common pleas are elected by the Legislature, and hold for seven years. Justices are elected by the people for three years.

Now sir, when gentlemen talk about the good behaviour tenure, as one of the sources of our prosperity, and caution us against abandoning it for untried experiments, I point them to Ohio. A state whose resources are in process of rapid development—whose prosperity has been unexampled in the history of the country, and to which thousands of our citizens have emigrated to add to her fast swelling population, has derived no advantage from the good behaviour tenure—has become a home for the people of other states, and extended ample protection to them and their property, notwithstanding the limited tenure of its judges. Is not Ohio, in all her length and breadth and rising greatness, an argument for me ? Let gentlemen answer Ohio.

In Tennessee, judges of the supreme court and inferior courts are elected by the Legislature—the former for twelve years, the latter for eight.

In Maine, Alabama and Missouri, judges hold till sixty-five and seventy years of age.

In Arkansas and Michigan, the last two states that have formed Constitutions, the life tenure does not prevail. The Constitution of the last named state, I regard as one of the noblest works of the age. How complete its distribution of the powers of government! How ample its provisions for universal liberty, education, suffrage and every great state object! It is formed after the best models, and, much better than ours, de-

serves the appellation of a "matchless instrument." It may be considered as the work of delegates from every state in the Union, for the people of that state have been gathered from every portion of the country, and unite the joint experience of all our systems of polity. If there be, in forming a Constitution, any advantage in numerous examples, any thing in varied knowledge and experience, any thing in freedom from the violence of party, and any thing in the absence of all disturbing and exciting motives, the people of Michigan possessed it in settling theirs.

Considering the time and circumstances of its adoption, the lights shed by surrounding examples, and the principles embodied in it, that Constitution comes to us as high authority, and it contains no such solecism as life offices. The judges of the supreme court are appointed for seven years—judges of county courts, associates of circuit courts—judges of probate, and justices of the peace, are elected by the people for four years. I cannot help thinking, sir, that this last experiment at a free Constitution ought to outweigh, in this argument, all the abstractions, which great names, ancient and modern, have sanctioned, and which the gentleman has pressed into his service. If I am mistaken in this, let me ask if the examples of all the States to which I have referred, are to go for nothing in this argument. They modify the judicial tenure variously, but none of them extend the good behaviour principle to every branch of their judiciary in the same unqualified manner we do. Is this no evidence that the American sentiment is against this tenure? Is it not at least evidence that communities of freemen may live in the enjoyment of all the rights of freemen, without so permanent and irresponsible a judiciary as ours? Whatever else is denied to me, I feel entitled to this conclusion. It will be remembered that between other States and ours there is a strict analogy, so that you may reason from them, to this, with propriety and force; but that, between the English or federal judiciaries and ours, there is no such analogy, and there can be no such argument.

Mr. Chairman these are some of the views and reasons which have induced me to move this amendment. I submit, sir, if there be not in the character and wishes of our people, in the genius and spirit of our institutions, and in the evils and disadvantages of the good behaviour principle, reason for abandoning it; and if there be not, in our own and the experience of other States, and in the principles of the limited tenure, abundant encouragement for adopting this. If I believed it would sacrifice the independence of the judiciary, I would not ask you to abandon that principle and adopt this one, but I do not believe it. I do not believe it is necessary an officer should feel himself a tenant for life, in order to be independent and upright. If he be an honest man, he will be independent of all improper influences; if he be not an honest man, no parchment limitations can make him independent, and it is worse than mockery, to instal him in office during good behaviour. In what does the independence of a judge consist? It consists in rendering judgment according to law, without any hope of gain or fear of loss. How is a Pennsylvania judge to gain or lose by his judgment? We have no crown influence to propitiate, no disappointed political power to dread.

The people will not sacrifice an independent and upright judge, for it will not be to their interest to do so; and the judge will be independent and upright, when every other higher motive fails, in order to make it

their interest to retain him. But, we are told, occasions of high party excitement, sometimes occur, and that a case may come into the courts for decision, which divides and excites the whole community, and the gentleman from the city has illustrated the danger of such an occurrence by a recent example in New Jersey. What was that case? We understand from the gentleman, that a controversy had arisen between two sects of Quakers, and that a suit was pending before Chief Justice Ewing and Judge Drake, which involved the title to a large amount of property claimed by both sects—that judgment was rendered in favour of the orthodox Quakers who were the weakest party, and that the Hicksites threw their influence into the political scale, which next year returned a majority of members to the Legislature, who were adverse to renewing the commissions of Judges Ewing and Drake, which were about expiring —that Judge Drake was turned out, and that Chief Justice Ewing would have been, but for a merciful Providence who removed him by death, before his commission expired. I am not about to deny, Mr. Chairman, that this is a very affecting story. It addresses itself very strongly to our feelings, but what does it amount to as an appeal to our judgments. To this simply, that Judge Drake was not re-appointed to an office which he had held many years, the majority of the people preferring another. And what is this but the operation of the republican principle of governing by majority.—They turned out one man and put in another, and had they not a right to do so? Judge Drake had no claim on the office; it was not made for him, it was not his, it was the people's office, and if a majority of them thought it could be better administered by another incumbent, who in this country, where every thing goes by majorities, can question their right? It was, I repeat, the operation of a republican principle. I do not mean to say that the exercise of this principle, in this particular case, was wise or just—I think it probable, it was harshly applied, and it may have been attended with distressing circumstances, which are to be regretted; but, when you divest it of all its attending circumstances, and look at the transaction as the operation of a political principle, you can see nothing in the principle to condemn, unless you condemn the principle on which all our political institutions rest. I understand the public interests did not suffer by the change, for that Judge Ryerson, the successor of Judge Drake, is one of the ablest lawyers and purest men to be found in the State of New Jersey.

But, sir, I thank the gentleman from the city for bringing this New Jersey case to the notice of the committee. It proves two things very germain to my argument: First, that you can obtain learned, able and upright lawyers to go on the bench under the limited tenure. The gentleman paid a high eulogy to both Judge Ewing and Judge Drake, and I have no doubt they deserved it; yet you find them leaving their professions, to go on the bench, under a tenure which they knew would expire of its own limitation in seven years. Connect this fact with the experience we have had in our district courts, and can any body doubt that the *elite* of the profession will accept judicial appointments for a limited time, if the salaries be adequate? But I thank the gentleman for this case, for another reason. It proves in the second place, that a prospect of losing office is not always destructive of judicial independence. These judges undoubtedly knew that their decision would array against their re-appointment, the powerful influence of the Hicksites, but whether they decided

right or wrong, they certainly did not bend to this influence ; so that we have in this case a consoling example of independent and upright judges, deciding conscientiously, and not caring for consequences. Moreover, it is to be considered, that this was a peculiar case of popular excitement, of rare occurrence, which could only have operated so effectually in a small community, and would have been unsufficient to agitate parties in a great State like ours. Altogether, I do not think the New Jersey case is calculated to aid the gentleman's argument sensibly. And still less to the purpose were his instances taken from Cromwell's time, and the French revolution. Why sir, what would *any* tenure of a judge have availed him in those times ? Would Cromwell, do you suppose, who cut off the head of his king, have been restrained, in his purpose, by a judge, with the good behaviour tenure, pleading the habeas corpus act ? He would have taught him that the only good behaviour he was bound to, was obedience to the protector ! And do gentlemen fancy that the good behaviour tenure would have mitigated the horrors of the French revolution, or saved a single victim from the guillotine ? Impossible. These were times when arbitrary power was the only law, and they can furnish no argument for a constitutional question. For what purpose are such strained analogies introduced here ? We have a written Constitution, which prescribes the orbit of each department of the government ; we have no arbitrary power, no lawless licentious faction to fear ; but a sober, staid and honest people who want the justice of the State administered by men in whom they can confide, accordtng to law, and without sale, denial or delay. They know what a judge should be, and after all, the people are the best judges of the judges. Give them, for their judges, men who are sound lawyers, who are conscientious, who are gentlemen and republicans, and there will be no fear of popular reproach oı persecution, and no danger of justice being warped, and the land marks removed by seductions of judicial independence and virtue. Make it the interest, sir, of the judges to serve such a people well, and you will promote their independence and all the judicial virtues. The love of popular applause is one of the strongest and noblest instincts of our nature, and if judicial independence can have a stay more firm and sure than all others, it is this. My amendment lays hold of this feeling of the human heart, and makes it stand surety for the good behaviour of the judge. For when his commission expires, and its renewal depends on the public voice, he will feel its value, and learn, by an independent, faithful and upright performance of his duties, to merit its approbation.

Mr. Chairman, there are many gentlemen here who believe the people of Pennsylvania desire the proposed change. I believe a large proportion of our fellow citizens expect and desire it. They regard these life offices as the plague-spot in the Constitution, and we shall sadly disappoint their hopes, if we do nothing to eradicate it. Other gentlemen doubt that a majority of the people wish for the change, and they believe firmly that many of them prefer the good behaviour tenure to any other. Now in this state of uncertainty and conflicting opinion, what can be more proper than to submit the question to the people. Every thing we do here is to be reviewed by them, and it is to that final arbiter, public opinion, that I wish to bring this issue. Let the principle of the amendment be adopted ; I am indifferent about the period of the

tenure, and all minor questions, and then gentlemen may enlighten public opinion before the election, and persuade the people to reject the amendment at the ballot boxes, if they can. If the people sustain the amendment, and declare for the limited tenure, it ought to become, as it will, a part of our Constitution.

Mr. Chairman, justice to myself requires me to say, in conclusion, that I have been influenced in my support of this measure solely by a conviction that it is right, and that the public interests demand it. I have no prejudice or pique, against judges to gratify—no wrongs to redress —no secret griefs to assuage. I have in that department many friends—I do not know that I have a single enemy.

I thank the committee for the patience and attention with which they have listened to me, and cheerfully commit the question to their judgment and candor.

The committee rose, reported progress, and obtained leave to sit again ; and,

Then the Convention adjourned.

TUESDAY MORNING, October 31, 1837.

Mr. Forward, of Allegheny, submitted the following resolutions, which were ordered to be laid on the table and printed:

Resolved, That it is expedient to amend the fifth article of the Constitution, so as to incorporate therein the following principles:

First. That the judges of the supreme and inferior courts may be removed by a vote of two-thirds of both branches of the Legislature.

Secondly. That no person who is or shall be a judge of the supreme or any inferior court, shall be eligible to any other office in this Commonwealth; that this ineligibility shall continue until the expiration of two years from and after he shall have ceased to hold his office ; and that if any person, holding the office of a judge of the supreme or any inferior court of this Commonwealth, shall be a candidate for any legislative, executive, or judicial office in the government of the United States, his office shall be thereby vacated.

Thirdly. The Legislature shall provide by law for the appointment of commissioners to take the depositions of witnesses in cases of complaints made against any of the judges of the supreme or inferior courts, and that the depositions of witnesses thus taken may be read on the trial of the party accused, unless he shall specially demand their personal attendance.

Mr. Sturdevant, of Luzerne, submitted the following resolution:

Resolved, That on and after Monday next, when this Convention shall adjourn, it

shall adjourn to meet again at nine o'clock in the morning, to continue in session until two o'clock in the afternoon, and that the afternoon sessions will be dispensed with.

The question being taken on the second reading of the resolution, it was decided in the negative—ayes 28.

Mr. PORTER, of Northampton, submitted the following resolution:

Resolved, That the use of this Hall be granted to the Rev. Walker Booth, to-morrow evening, for the purpose of delivering a lecture explanatory of the views and prospects of the colonization society.

The resolution was read a second time and adopted.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'SHERRY in the Chair, on the report of the committee to whom was referred the fifth article of the Constitution.

The question being on the motion of Mr. WOODWARD to amend the report by striking out all after the words "section 2," and inserting in lieu thereof the report of the minority;

Mr. WOODWARD having concluded his remarks,

Mr. PORTER, of Northampton, said it was conceded on all sides that justice should be in intelligent and independent hands. There could be no greater curse inflicted on a country than a weak and unlearned judiciary. I, (said Mr. P.) am not singular in this opinion. Our fathers thought it sufficient ground of complaint against the British government, that the King had made the judges dependent on the crown. So also thought the Convention of 1788, which formed the Constitution of the United States. And so thought the Convention of 1790, which formed the Constitution of Pennsylvania. The former provided that the judges should hold their offices during good behaviour, and should receive a compensation which could not be diminished while they remained in office. The Constitution of 1790, was similar in its import, although it varied in its phraseology, introducing the word "adequate," before "compensation," so as to make the section read thus:

"Section 2. The judges of the supreme court and of the several courts "of common pleas, shall hold their offices during good behaviour: but "for any reasonable cause which shall not be sufficient ground of im- "peachment, the Governor may remove any of them, on the address of "two-thirds of each branch of the Legislature. The judges of the su- "preme court, and the presidents of the several courts of common pleas, "shall, at stated times, receive for their services, an adequate compensa- "tion, to be fixed by law, which shall not be diminished, during their "continuance in office: but they shall receive no fees or perquisite of "office, nor hold any other office of profit under this Commonwealth."

On examination of the book of Constitutions furnished us, I find that, out of the twenty-six States, the Constitutions of eighteen provide that the judges shall hold their offices during good behaviour. These eighteen states are Maine, New Hampshire, Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Kentucky, Tennessee, Mississippi, Alabama, Louisiana, Illinois and Missouri. In Vermont and Rhode Island, the judges are elected

by the Legislature annually; In Ohio, the term is seven years; In Georgia, they are elected by the people for seven years; In Indiana and Michigan they are appointed for seven years, and in Arkansas the term is eight years. I am aware, and the gentleman from Luzerne has ingeniously drawn a distinction, where there is no real difference, that in New York, no judge can hold his office after a certain age, varying from 60 to 70. But this does not take away the point I assumed, that the judges in this State hold their offices during good behaviour. It is a tenure for good behaviour, until a certain age. All of us profess to have a high regard for the judiciary. Every man desires to see the judges independent, but we all arrive at that result by different means. I shall not be found to agree exactly with either of the gentlemen. I do not believe that the tenure constitutes the independence. I believe the independence to be seated in the mind; and, whether the mind be strong or weak, the tenure will not operate on it. For a very considerable length of time, I have turned my attention to this subject, and have recurred to the various Constitutions, and to the experience of our forefathers, in order to enlighten myself. I do not believe, if you put a weak mind on the bench, and the tenure is for life, or for good behaviour, which is a different thing, that you could make a weak and imbecile judge, a man of firmness and independence. But I do apprehend it will require more of nerve, firmness of character, and independence of mind, than ordinarily falls to the lot of humanity, before any man, with a salary scarcely sufficient for the maintenance of his family—and which has been cited as one of the inducements to take the office, would be able to resist the desire to continue in office beyond his term of years. This may, perhaps, be counteracted by making the salary more competent, and providing that there shall be no reappointment. But even out of that an evil would arise. I have been a practising lawyer for many years; a great deal of business has passed through my hands, and one of the greatest evils I have had to encounter is the changes of the judges. It is far better that the judicial decisions should be uniform, and in accordance with each other, than that they should be correct or incorrect, and I have seen every new judge desirous to establish some new and favorite opinion, instead of affirming and continuing those which have been declared by his predecessors. The supreme court has undergone changes since I have been at the bar, and very great danger has been sometimes apprehended from the desire of some of the new judges to unsettle former opinions. This is a matter sedulously to be avoided, and suggests a strong reason for caution in adopting a system of change in those persons who fill judicial stations, lest we should subvert a system on which depends a vast amount of property. I may here be permitted to say, that I recognize the right of instruction by constituents: for when I was nominated, for a seat in this body, the meeting which nominated me, adopted a resolution that the candidate nominated be instructed to vote for the limited tenure: that is that the judges should hold their offices for a term of years; I was called on to address my constituents on that occasion, and I told them that I preferred the good behaviour tenure, and that I could only go for a term of years, on the condition that the salaries were increased, to such an amount, as would secure us the services of the best men as judges. With this expression of opinion on my part, I was elected by the people, and I am now, therefore, carrying out these principles, by advocating this system

on this floor. I then said, as I now say, that I prefer the tenure for good behaviour, because that system brings more talent on the bench. I think the salaries are too low even with the good behaviour tenure. Your supreme judges have almost every moment of their time occupied by their official duties, and no one of them receives, in salary, as much as any respectable or experienced lawyer at the bar makes by his practice. Now your judges of the supreme court have a per diem allowance, and the others have a trifle to pay their expenses while away from home, but not leaving sufficient for themselves and their families to subsist on. We have lost some of our best judges by resignation, because of the inadequacy of the salaries which are paid. In my county, the ablest judge in Pennsylvania, resigned his seat on the bench, and returned to the bar, where he is now making, by the practice of his profession, three or four times as much as he received while on the bench. Judge Mallery was one of the best judges we have had: he left the bench with the regret of the whole district; and he resigned because of the low salary. A very good judge has succeeded him, but one not superior to Judge Mallery. A lawyer of good practice will make three or four times as much as a judge receives. Yet there are men who, after becoming tired of the law, are ready to accept a judgeship; but there is always danger to be feared from these changes. Shirley says:

> " Tis a maxim in our politics,
> A judge destroys a mighty practicer
> When they grow rich and lazy, they are ripe
> For honor."

Such a man is not always desirous to do his duty. I would rather take one not ripe and rich in honors, and infected with the laziness of pleasure. A judge should have all the energies of his mind about him, and if taken for a term of years only, you must give him a good salary. I recently met with an article in a newspaper which I will beg leave to read to the committee. It runs thus—

(Here Mr. Porter read an extract calculated to show the false economy often practiced both in public and private affairs, which in the end turns out useless expenditure. The extract itself is mislaid and cannot be recalled to memory.)

I have always, in the course of my life, found that the men I employed at the least wages did not conduct matters most economically; and I am satisfied that we must pay well to have work well done. Judges ought to be selected for their moral worth. Can you expect men to serve the public for less than we can get them to serve ourselves. You want, on the bench, one who is beyond the reach of all sorts of influences, and in whose integrity and discernment the utmost reliance can be placed. I do not know that I ever heard a judge more accurately described than in the passage which I will ask permission to read to you.

> ———"With equal scale
> He weighs th' offences betwixt man and man;
> He is not so sooth'd with adulation
> Nor moved with tears, to wrest the course of justice
> Into an unjust current, to oppress the innocent
> Nor does he make the laws
> Punish the man, but in the man the cause,"

If the judge holds in his hands the lives and property of his fellow citizens, and if learning and intelligence are necessary to make him pass on all great questions, ought we not to use every means in our power to obtain so great a good. Take a judge beyond the middle age, who wishes to retire from the turmoil of business. After a few years, he will be turned out to scuffle for his bread; and after he has gone still further down the vale of years, he will be less fit and less competent to go into the arena of the bar for his livelihood. Tell me not he will be re-appointed. The political wheel will have performed half a revolution before the expiration of his term, and he who was at the top when he went into office, will be at the bottom when he goes out. Where are all the politicians who ten years ago, swayed the destinies of the Commonwealth? You may look for them in vain. They have all passed away, and their places are filled by others who were then not heard of. So it will be with your judges. Dont tell me that the political changes will produce no effect on the judicial offices. By whatever name an Executive may come into office, he must reward those who put him there. He must apportion the offices in his gift among his followers. There has been a vast change in this respect since I first knew political life. Formerly, the man who applied for office, and did not succeed, was very careful to conceal the fact that he had made an application. He was careful to avoid detection, in case of disappointment. Now every one is asked to be a signer of a petition for office, and every disappointment is complained of to the world. Every man has a set of political hangers-on who must be fed. I speak the words of truth and soberness when I say this; and I ask whether the judges will be less exposed to these changes than others? Party discipline requires that persons belonging to the party shall be rewarded, and if they are not, they will desert to the enemy. I speak of man as he is. I am aware that I have been charged with bringing in the battering-ram of radicalism against the judiciary, when the other day I moved to substitute "or" for "and." If this charge had proceeded from one of the reporters for the daily press, who are here to assail their opponents, it would make but little impression, but when published in a paper edited by a member of the Convention, with whom I am on the best terms, I confess I was surprised. I only touch this subject lightly, because I felt myself pointed at. I have no idea of a judiciary truckling for popularity, and endeavouring to shape their course of conduct to suit the various gales of popular opinion—I would not have a judge such a politician as Byron describes, when he says:

> "Courteous and cautions, therefore in his country
> He was all things to all men, and dispensed
> To some civility, to others bounty,
> And promises to all—which last commenced
> To gather to a some what large amount, he
> Not calculating how much they condensed."

I do not wish to be understood and I hope not to be understood as wishing to undervalue the good opinion of mankind; that, I would cultivate by every means in my power; but I would cultivate it by an elevated, honorable, honest and independent course of conduct, not by pursuing an *ignis fatuus* the pursuit of which leaves its votary in his

kindred mire. I would have your judge courteous and conciliatory in his manners, but inflexible in his moral attitudes.

> ——" Of manners mild
> And winning every heart, he knew to please,
> Nobly to please: while equally he scorn'd
> Or adulation to receive or give."

Such judges are above all praise, but such we are not likely to obtain, if we attach to the office a limited tenure and meagre salaries. I believe, from what I have heard, that there is a disposition in the Convention to change the good behaviour tenure to a term of years. If that be the intention, I shall make amendments for the purpose of prescribing a scale below which the Legislature shall not fix the salaries of the judges. I have said I shall not propose to fix these salaries in this Constitution. But we have a precedent thus far in the Constitution of the United States which says, the salaries shall not be diminished while in office. In our own Constitution, there is also an analogous provision, relative to an adequate compensation, and the amendment of the gentleman from Luzerne provides that the salary shall not be diminished during the continuance of the judge in office. And there is that singular fact connected with these clauses: The Constitution of the United States prohibits the diminution of the salary while in office, and the United States judges receive a salary of $4,500. Our State Constitution requires that *adequate* compensation shall be given to the judges, and we give them $1,600. The United States gives *a* compensation, and allow near $5,000; and our State ordains *an adequate* compensation, and allows from $1,600 to $2,000. So the *compensation* in one case is about twice as much as the *adequate compensation* in the other. These salaries, it should be borne in mind, were fixed many years ago; and fifty per cent added to the original salaries would not make them more than equal to the increase in the cost of subsistence. I have said it will be better to leave the subject of duelling to the Legislature. It was replied—no we cannot trust it to the Legislature. Now the same persons tell us we must leave the judges to the Legislature. I do not exactly understand this blowing hot and cold, this playing of the game of fast and loose. If we are to limit the Legislature in any case, it is much more important that we do so in reference to the judges, as by that means we shall ensure their independence of the Legislature.

Now he held that the report of the minority of the committee on the judiciary on the subject of salaries, in saying that some constitutional provision is necessary to protect judges from the invasion of the Legislature, in reducing their salaries so low that they would be obliged to resign, was a concession, which he apprehended was of some weight in this matter, and required us to look into it, and place them in such a position as not to be liable to be legislated or starved out of office. It seems to be granted by the gentleman from Luzerne, as desirable, that the independence of the judges should be secured, and in conceding this, he concedes also, that the provision should be as it is, so far as it regards the judges of the kingdom of England and those of the courts of the United States, the federal courts, but he contends that it is not right so far as it regards the judges of the Commonwealth of Pennsylvania. Now he begged leave to enter his protest against this distinction of tenure of the judges of courts, organized on the same principles. He understood the

gentleman from Luzerne to say and to argue that these judges of the courts in Pennsylvania, were judges for life, so long as they could resist removal on the address of the Legislature, and conviction on impeachment, and he understood him further to say, that no judge could be impeached, unless his crimes were such as to make him a fit subject for the penitentiary.

In answer to this, he would turn the gentleman to the record in regard to the only case in which a judge was impeached and removed in this Commonwealth. The case he alluded to, was that of Judge Addison, and he would ask any gentleman who knew the man, whether he was a fit subject for the penitentiary after he was removed? He was removed for certain misconduct in office, for judicial tyranny and for bringing politics on the bench, and he was removed on impeachment; but he would leave it to the people of Pennsylvania to say whether his character for integrity suffered at all by his removal. You have had various other impeachments in Pennsylvania. You have had the impeachment of three of the judges of your supreme courts. Judges Shippen, Yeates and Smith, were impeached. Gentlemen must all remember their trial, and were they impeached for offences which would have consigned them to the penitentiary? Did their characters suffer—he spoke of their characters as men—although a majority of the Senate, but not a constitutional majority—(two thirds)—were for convicting them; or were they considered fit subjects for the penitentiary? Did they not live long afterward, administering the laws of their country, and when they died, they went to their graves, full of years and full of honor. We have had three other impeachments in Pennsylvania, and in no one instance, were their offences such, as would have consigned them to the penitentiary, if they had been convicted. In the law of impeachments there were criminal offences of which a judge might be guilty, which would require his conviction, but there may be high crimes in the judge, that are not penitentiary offences in the man. A judge may be guilty of partiality, or of corruption, if you please, not amounting to bribery—he may so conduct himself as to make himself a fit subject of impeachment and removal, and yet not be a fit subject for the penitentiary. There was another matter connected with this, to which he begged leave to call the attention of the committee; that is, how long had Judge Addison been on the bench when he was removed? Had he been there more than eight or ten years when the occurrence took place, in consequence of which he was convicted and removed? He apprehended not. And, pray, how long had Judge Cooper been there when he committed the offences complained of by the gentleman from Luzerne. He was appointed in 1806 or 1807, and removed in 1810 or 1811.

Now, sir, was it the length of time which they had been in office which led them to commit these offences, for which they were brought before the Legislature? Why, the history of the State tells you—no. The facts of the case tells you—no. Where will you find men who were held in higher estimation than the judges of your supreme court, who have served for a long period of years. How long was Chief Justice Tilghman on the bench? He believed that gentleman was first appointed a judge of the common pleas, in 1804 or 1805, and in the year 1806, he was elevated to the situation of Chief Justice of the Commonwealth.

If he mistook not, that gentleman was more than twenty-one years on the bench, and was ever a complaint made against that individual? He went to his grave with as pure and unspotted a reputation as any man who ever presided over a court. Why, therefore, is it, that we are asked to make these changes. He asked gentlemen to show him the instances—point him to the cases in which judges in Pennsylvania were incompetent or unwilling to discharge the duties of their offices. He asked for the facts,—he did not want speculation or theory. Sir, take the judges of the United States, and how long was Judge Washington and Judge Marshall on the bench? Judge Marshall occupied that high station for a long series of years, and to the day of his death he had the full confidence of his countrymen, and the tongue of slander has been raised against him but once since his death, and its author has been consigned to ignomony in consequence thereof. Now, Judge Cooper was removed, and has his character suffered from that removal? Has he not since been in the enjoyment of at least, as high and good a character as he ever had? Has he not since been filling a large space in the world of science? He has obtained a reputation in the world of science, which he might have looked for in vain if he had continued on the bench. But we have been referred to the Constitution of 1776, and told that there the tenure of judges was limited to a term of years. With all due deference to gentlemen, he had to say that the Constitution of 1776, was an experiment which utterly failed in practice. Was he speaking without book on this subject. He had heard the delegate from Luzerne speak of the democratic Constitution, of which Benjamin Franklin was the author, as if it was perfection itself. He happened to have an authority drawn from the time when that Constitution was in operation, which, he took it, could not be doubted. He found, on reference to Carey's Museum, volume 1, page 386, an authority in point. In the year 1779, the republican society of Philadelphia in an address to the citizens of the State, pronounce that instrument as weak and inefficient. They say:

"We are convinced, upon the most impartial examination, that its general tendency and operation will be to join the qualities of the different extremes of self-government. It will produce general weakness, inactivity and confusion, intermixed with sudden and violent fits of despotism, injustice and cruelty."

Again: "Of all governments those are the best, which, by the effect of their original Constitution are frequently renewed or drawn back to their first principles. If the assembly departed from the principles of the Constitution, it would be drawn back by a legislative council. If the council should depart from them it would be drawn back by the assembly. But when a single legislature is disposed to depart from them there is no power which can confine it within proper hands."

"In all the most celebrated governments of antiquity, the legislatures were composed of different branches. In all the other States except Georgia, the legislature consist of distinct bodies of men."

"A single Legislature is a novelty, and the example of Pennsylvania will serve as a beacon rather than a precedent. For *while other States enjoy happiness and tranquility under their governments, Pennsylvania exhibits mournful scenes af weakness and distraction.*"

This address which was delivered three years after the Constitution of 1776 went into operation, was signed by eighty-two persons of character and standing—the prominent republicans of that day. Among them he found the names of Robert Morris, Thomas Mifflin, Benjamin Rush, George Clymer, George Ross, James Wilson, Francis Hopkinson, Jacob Rush, James Mease, John Shea, Thomas Forest, Charles Thompson, and others. Six of the signers to this address were signers of the declaration of independence, and others of these gentlemen who were subsequently active in each of the subdivisions of parties into which the country became divided, upon the adoption of the Constitution of the United States. Now what have you here? You have the pledge of Thomas Mifflin, that this Constitution of 1776, was entirely defective, and that it would not answer the ends of the government, and Benjamin Franklin himself, made a concession of this point in the Convention, which formed the Constitution of the United States, by agreeing to that Constitution which was so entirely dissimilar to our Constitution of 1776. He himself saw the weakness and inefficiency of that instrument—he saw that it was a Eutopia upon paper, and any thing else in practice. Your judiciary, what was it under that Constitution? It was composed of a supreme court, the judges of which were appointed for a term of years. Your courts of common pleas were held by justices of the peace, and if you want to see how such courts are held, and how the business in them is conducted, just go into the State of New Jersey, where you will see twenty justices of the peace having commissions as judges, holding a court of common pleas, and, as to the chance of having the law administered according to the rules of law, it is not looked for. The legal characters there, will tell you that they never can have any legal principles settled in their courts of common pleas. Well, would such a system as that suit here in our State? We have had fifty years' experience under this Constitution of ours, and we had a vote of the Convention but the other day, when he moved to substitute the word "or," for the word "and," which showed the indisposition of any one to make any change in regard to our judiciary. Then we had the testimony of the very gentlemen who are desirous of making these changes in your Constitution, that the organization of your judiciary in 1776, was not so good as that of 1790, with which so much fault had been found. A good deal was now said, and a good deal had been said sometime ago, in relation to the manner in which the Constitution of 1790 was formed. It was not necessary for him to go into a discussion of this matter, it was enough for him to know that the people of Pennsylvania adopted it in practice, and administered their government under it from that time to this, and he should be exceedingly happy, he should be much pleased and gratified, if, in fifty years to come, the results of our deliberations shall have produced as much happiness, security and prosperity, as the existing Constitution has done. He asked gentlemen, when they were making these attacks upon the judiciary—when, as he believed, they were sapping the public confidence in the judiciary, to ponder well as to the effect of what they were doing. A judiciary, which has lost the confidence of the public, cannot administer as great an amount of good to the public, as a judiciary which had the confidence of the public, he admitted—but what was it which deluged France with blood? What was it which covered her fair fields with carnage and slaughter? Why, sir, it was charges upon

charges made against every thing and every body. Calumny and detraction prevailed every where, and the institutions, which had formerly stood up as the beacons of their safety, had the passions of the people arrayed against them, and history tells a sad tale of the sufferings of that devoted country. Now he did not apprehend any thing to that extent would ever exist in this country, but we are going on, endeavoring, as far as we can, by declamation, to withdraw public confidence from every branch of our government. When the Executive department of our Constitution was under consideration, the Governor was not to be trusted. Oh no. He had a mighty power which must be taken from him, or he would abuse it. When the legislative department came up, the cry was, that it must be restricted, because it had practised very great abuses; and now, since the judiciary article has been under consideration, the same thing has been told us over and over again. He wished to be permitted to say, what was true, that the judiciary was the weakest of the three departments into which your government was divided, and it is perhaps entitled to more of the protection of the community than either of the others. It has no means of influence, by mingling in the common affairs and business of men, and, although he believed the judiciary was as warmly cherished by the people of Pennsylvania as any other department of the government; it was not usual to find it, mingling and going in with the common affairs and business of the country, nor ought it to do so; and further, he believed, if any system could be devised, to make them perfect strangers to the people with whom they had decisions to make and business to settle, that a vast amount of good would result from it. He had heard a good deal about the importance of the trial by jury, a system which it is every man's desire to preserve inviolate, and he trusted it never would be taken away, as it will stand between weak men and the persecutions of the strong, and protect them, in almost every instance, so long as you preserve a proper organization of the judiciary; but he never wished to see the jury invested with power to invade or violate the laws, because, whenever a party is injured by their mistake, there is no remedy. If, however, a judge makes a mistake his opinion can be corrected. In the course of his experience, he had seen more injustice done by the verdicts of juries, than ever he had seen done by the decisions of courts. He had seen some strange things, in his time, in relation to the decisions of juries, one of which he would mention as a sample of the rest. When he was a young man in the city of Philadelphia, he saw a jury, in an action to recover an alleged balance of account, give a verdict in favor of a plaintiff for the amount of thirteen thousand three hundred and some odd dollars. The defendant obtained a new trial, in consequence of some cause or other, and the matter was referred to some of the most able accountants in the city of Philadelphia, and examined by them, and it was finally settled, and rightly settled, too, by awarding to the plaintiff the sum of two hundred and fifty dollars, as the amount being due him on the proper settlement of the accounts, thus showing that the jury alluded to, had made a mistake of upwards of thirteen thousand dollars. This was but one, out of many cases, which he might bring to the notice of the committee, to show that juries might commit errors, and do more injustice to parties, than could be done by the mistakes of judges.

In the course of his practice, his experience had shown him that your bench has been filled with able and with honest men—he spoke of the

men—because there might have been instances, where judges had done him injustice in a trial, and he supposed there was no lawyer who had any practice at the bar of any account, who had not some such complaint to make. He remembered to have heard of a client, in the city of Philadelphia, going to his lawyer after a suit was decided against him, and saying, "sir, did you not tell me so and so before this trial came on?" "Yes," says the lawyer, "and did I not tell the judge so too, but he would not believe me." So it was, in a great many cases, and he supposed that there was not a lawyer at the bar, who in the heat of the moment, when a decision was made against him, does not believe frequently that the judge is wrong, yet he supposed when we came to look back for a series of years, we would all find that the judges were more generally right than we were. He was not going to give up a system, under which we have all lived, and thrived, and prospered, for a new and untried theory. Destroy the independence of the judiciary, which has served us so long, and he feared you would never look on its like again; and while he entirely acquitted the respectable gentleman from Luzerne, from any such charge, he could not help believing that this spirit of opposition to the judiciary, so far as this provision is concerned, and so far as the party urging it, are concerned, had its origin in some private griefs. A man who has decisions made against him, too frequently blames the judiciary, instead of attributing it to the want of merit in the suit he prefers. It has been too common to lay all the blame of failures, in suits and every thing else, at the doors of the judges of the courts, and he feared that those who sowed the wind, would find too late that they would be reaping the whirlwind. He feared the personal objections to particular judges in the State, might have its influence in giving head and strength to this opposition. We have some twenty-five or thirty law judges in Pennsylvania, and it was not to be expected that every man of that number is a Solomon. You could not select twenty-five men, no matter what care was taken, who would come up to the expectations of every body. That is not to be expected. Why he had known judges persecuted by lawyers, because they could not obtain practice, thinking it was the fault of the judges, when in fact it was their own want of merit. Every thing is heaped upon the judges, and if this thing is tolerated, he should scarcely expect under any new Constitution, to see men of equal talents and respectability on the bench with those who now filled those situations, because it is no pleasant matter to be pointed at as the cause of every man's grievances. Before he left this part of the subject, he wished to be permitted to notice some observations made by the gentleman from Luzerne, a gentleman to whom he always listened with great pleasure, because he always made the most of his subject; but one part of his argument he could not understand. The gentleman said that this principle of good behaviour, was perfectly right, when it applied to the courts of England, or of the United States, but that it was wholly wrong, when it applied to the courts of Pennsylvania. Now sir, how was this? What reason is there for its being right in one case, and wrong in another. The gentleman had given, as a reason, that the judges of the United States court, had to exercise certain political powers, which made it necessary that they should have this tenure. Well, is that denied to the judges in Pennsylvania? Now he would put it to the gentleman from Luzerne, whether if it was an evil to have judges during good beha-

viour, where their powers were small, it would not be a greater evil, where there powers were greater. If it was an evil, to have judges of this tenure in Pennsylvania, on a small scale, he would ask if the evil did not increase, in proportion as you increased the scale. If judges, possessing but little power, would abuse it, he should wonder, if they were invested with more power, if they would not abuse it. It seemed to him that this would be the inevitable conclusion. The judges of the Supreme court of the United States, are invested with the power to decide on treaties made by the United States, and to decide on the constitutionality of the various laws of the States and of Congress, and the gentleman says, it is necessary that these officers should hold their offices during good behaviour, because of the largeness of the powers they have to exercise. Well does not this concede the whole argument, and does it not carry with it the necessity for our supreme court being constituted in this way? Have not our judges of the Supreme court to decide on the constitutionality of certain laws? Does not our own Supreme court decide on the constitutionality of the enactments of our own Legislature ; and do not all the reasons which will apply to the government of the Union, apply, with double force, to the government of Pennsylvania? We have had the case of Judge Drake, of New Jersey, stated by both the gentleman from the city, and the gentleman from Luzerne, but he believed he could give a version of the cause which led to his removal, which had not been laid before the Convention. It is well known that some years since, the society of Friends divided into two parties, the Orthodox and Hicksites, and a dispute arose in relation to the right to certain property—the matter came before the Chancellor, who called to his aid two of the judges of the Supreme court of New Jersey, and it was decided that the property belonged to the Orthodox party of the Quakers. There was then a certain politician of considerable influence in that state, who told the Hicksites that if they would join the party to which he belonged, and aid in electing their candidates to the Legislature, as Drake's term of office expired that year, they would turn him out. They did so; this party carried the election, and this gentleman fulfilled his part of the contract by having Judge Drake turned out—or rather not reappointed. The judge who succeeded Judge Drake, was to be sure a respectable man, but he was not held in that high esteem by the bar, or the people of New Jersey, at the time he was appointed, as the remarks of the gentleman from Luzerne, would seem to indicate. He was a respectable man and a good lawyer, has applied himself to business, and has gone farther in the administration of justice, to satisfy the people of New Jersey, than it was expected any one would do for whom Judge Drake must be compelled to make room. The gentleman from Luzerne, had asked why has not this mad dog cry of life offices, or similar complaints, been raised against the other departments of your government? The gentleman contended that this was the main and the engrossing subject with the people, to have life offices, as he termed them, abolished. This was not the case, so far as he (Mr. P.) could learn. The engrossing subject of those gentlemen urging a reform of the Constitution in his section of the State, was as to the nature and extent of Executive patronage. The loaves and fishes were not distributed in a manner suitable to them, and they desired some other mode to be adopted, and he believed that more complaint had been made in relation to Executive patronage, than any other subject, and in-

finitely more than in relation to the judiciary. The great extent of the complaints which he had heard against the judiciary, coming mainly from the gentleman from Philadelphia county, (Mr. Earle,) was that the judges had appointed some of their relatives to certain offices, that they had shown a spirit of favoritism, in appointing auditors and referees in the city and county of Philadelphia, and some of the other counties, and this complaint arose just because the patronage of the court, like the patronage of the Governor, was not distributed in the right channels. Well sir, was there no complaint in relation to the Legislature? Was there no corruption charged in regard to them, and no necessity urged of limiting them, and preventing them from exercising certain dangerous powers; was not that a most fruitful theme for gentlemen who were in favor of reform, and was not complaint made long and lond in relation to it? He therefore did not agree as to the existence of the fact, that the judiciary was a subject of greater complaint, than any other department of your government. He believed there was less, infinitely less, evil sustained from the mal-administration of the law, than the abuse of Executive patronage, or improper legislation. Is it a fact, as stated by the gentleman from Luzerne, that your Governor and Legislature have more of the affections of the people than your judiciary? Sir, is not the appoinment of a good man, as judge, hailed throughout the country as a blessing to the people? Do not the people look to the judiciary, as the safe guard to shield them from oppression, and secure them in the possession of life, liberty and property; and have you ever known an instance in which they did not cling to a judge, who ably discharged his duties through life, and cherished his memory, when he was gone? He admitted that no system could be perfect—he did not look for any thing which would be perfect, this side of the grave. Why sir, is any Constitution necessary, if every thing is to be trusted to the popular voice? Why have we any Constitution at all? Why, just because it is a confession that man is not to be trusted, at all times, with his own government. The very fact that we are here assembled in Convention, to put a bridle on the people, to save the people from themselves, is a confession that man is not at all times to be trusted even with his own government; and, from the fact that representatives are men sometimes not to be trusted, it is necessary to bind them by this power, in their representative capacity, to prevent them from doing a wrong to the people. It is a solecism of the first order, that we have been brought here for our supposed wisdom, to bind the rest of our fellow beings who sent us here, from committing injustice on themselves. It was necessary, in our free governments, to have these checks in our Constitution, because of the fallibility of human nature; and sir, although the virtue, intelligence and patriotism of the people, are all beautiful themes to descant upon, and things which we all look to, wish for, and hope, do exist, yet every meeting of a Legislature, every meeting of a court, or meeting of a body similar to this Convention, was a commentary upon it, which showed that it did not always hold good in practice. This matter of having the will of the community to govern on all occasions, was a doctrine which was not founded upon proper principles. When our courts are brought into contact with some great excitement or agitation, they were, less likely to decide causes properly, and without prejudice, than if such excitement did not exist. This he held to be a rule without an exception, and provision is made in the statute books for

changing the venue, and trying such causes out of the county, in which such excitement exists. This is a protection to the party to be tried, from the improper influences of this excitement, and prejudice, which may exist in the minds of the public. Do not all gentlemen know the effect of prejudice upon the human mind? Do not all know that the most pure and virtuous men, cannot always rise superior to it? Do not all feel, in their daily intercourse, that the best actions may be perverted by prejudice—the purest motives may be maligned, the best intentions doubted, and men, who were deserving of praise, made subjects of condemnations? He said this, with the most perfect respect for the people, and a popular government. As he had heretofore said in this body, he would now say, that no man would bow, with more perfect submission, to a majority of the people, than himself, but he would also say, that the mass of mankind were fallible as individuals, as every one admitted, and, because individuals are not infallible, you cannot expect communities to be so. Men, in the heat of passion, do things, that they condemn, in their cooler moments; so, with masses of men, it is the same thing; and it was his ardent desire, that we might be enabled to transmit to our posterity, as sacred, independence as our fathers transmittted to us. He trusted that, if we changed the nature of the tenure of our judiciary, that we would provide an equivalent, which would command the best members of society, to fill the bench of your courts. He feared that no amount of salary which we might fix, would accomplish this, but he did fear that, unless, in some measure, this evil was remedied by an increase in the salaries of our judges, the independence of your judiciary was gone forever, and the liberties of your citizens would not be safe.

Mr. Chairman, I have occupied more of the time of the committee, valuable as I know it to be, than I had intended to have done; and I conclude my observations by bringing to the notice of the committee, the amendment which I shall propose at some future stage of our proceedings. I do not offer it now, because it might embarrass the question, or interfere with the course of argument of some gentlemen, who may desire to discuss at length the broad principle here involved. I merely now, therefore, bring it into view, as an amendment which I intend hereafter to offer to the section now under consideration before the committee. I will then ask the secretary to read it.

The amendment was accordingly read, and is as follows:

Amendments—strike out from fees in 15th line to "or" in 16th. Line 17, between the words Commonwealth and provided, insert these words: "Provided that the salary of the chief justice shall not be less than thirty-five hundred dollars; the salaries of the Justices of the supreme court not less than three thousand dollars, nor the salaries of the presidents of districts or other law judges less than two thousand dollars, per annum."

Line 18 and 19, strike out the words shall "by and with the advice and consent of the Senate."

Line 19, strike out "one of" and in lines 22 to 22, strike out all from "court" to "for."

Thus, continued Mr. P. striking out the rotating principle, which the delegate from the county of Luzerne, (Mr. Woodward) proposes to have,

and having the judges in commission for ten years to come; and then, at the end of the section, the following words:

Add to the end of the section, "and the presidents of districts and other law judges now in commission shall continue to hold and exercise their respective offices for the term of years, from and after the ratification of this Constitution, if they shall so long behave themselves well, as if no amendment had been made in the Constitution."

Or probably, continued Mr. P. gentlemen would prefer the following instead of this section; although I should prefer the one that has been already read:

"The commissions of the president, and other judges, learned in the law, now in commission, who shall then have been ten years or more in office, shall expire on the 1st day of July, 1840, and of those who shall not then have been so long in commission, at the expiration of ten years from their respective appointments."

I have said that I do not intend to offer these amendments at the present time. I merely wish to bring them into the view of the Convention, in order that gentlemen may have an opportunity to reflect upon them, and to see how far they are entitled to their consideration and favor.

In concluding these remarks, permit me to say, Mr. Chairman, that we have received, as a most precious inheritance from our fathers, a Constitution, under which the government of our country has been well and judiciously administered, with as few exceptions, I believe, as have ever occurred in the administration of any government on earth. Sir, the Government of the Commonwealth of Pennsylvania, has respected the rights of her citizens, has given security to their persons, and protection to their property; and has secured to herself the respect, the confidence, and the admiration of every other State in the Union. I ask gentlemen, members of this body, to ponder these things well; to think well what they are about to do—to reflect, solemnly to reflect, before they destroy a system such as this, or before they substitute for it one which, in our experience at least, has not been attended by the same beneficial results. I cannot conclude better, than by calling to the recollection of the committee, the charge given by one of our own citizens to his countrymen in relation to the value of the liberties they enjoyed:

"Contemplate well; and if perchance thy home
"Salute thee with a father's honor'd name,
"Go call thy sons—instruct them what a DEBT
"They owe their ancestors, and make them swear
"To pay it by transmitting down entire
"Those sacred rights, to which themselves were born."

Mr. MERRILL, of Union, said that the question now before the committee was, as to the best tenure of office, for the judges in this Commonwealth; that was, as to the best tenure of office as regarded the interests of the people; because he threw out of this discussion entirely every thing that related to the interest of the incumbent, except so far as that interest might induce abler or better men to accept such offices. He should base his argument alone on the interests of the people. What was the best tenure, for the interests of the people? And, before he proceeded in his argument, he would beg to inquire, for a moment, how

far the people were interested in the individuals who should hold judicial offices in the State of Pennsylvania? There were five Judges in the supreme court of the State; there were five district judges—and the judges of the nineteen districts of Pennsylvania, and the associate Judges of the city and county of Philadelphia; making a total of thirty-one Judges, all of whom were required to be learned in the law. Thus about two men, out of every hundred thousand in the State of Pennsylvania, were judges, and were the individuals on whom the amendment now before the committee was intended to operate. The interests of those judges, then, was the minimum, as compared with the interests of the great mass of the people of Pennsylvania; and, consequently, their personal interests could not be regarded at all, when put in the scale with those of the great mass for whom they acted. Not more than one man in fifty of those who constituted the bar of Pennsylvania could hope to rise to judicial preferment; but suppose that the number were greater, how could it affect the whole body of the bar, much less the people of the Commonwealth, which of those fifty should be the man? It was a matter of no importance, as regarded the interests of the incumbent, on another ground also. If a man accepted a judicial office for a limited period—say, for example, for a year or a month, and should not be reappointed to it at the expiration of that period, he had no cause of complaint; because he accepted the office, with a full knowledge of the terms on which he took it, he had no cause to complain if, by the operation of the principles on which a republican government was founded, he should not be reappointed to that office, when his tenure of service had expired. It was then obviously for the interest of the people of Pennsylvania, that this change should be made.

What, said Mr. M. are the qualities which are necessary to constitute a judiciary, and which are most useful to the people? Those qualities undoubtedly are, good natural talents, sound common sense, practical skill, thorough legal acquirement, and an absolute independence of all external or improper influences. Every man who is acquainted with the duties and the responsibilities of a judge, knows that all the qualities I have enumerated are essentially requisite to him. He must be impartial, able, learned, and free even from the suspicion of partiality. Will all these qualifications make a judge, such as is required by the great interests of the people of Pennsylvania? I believe they will. I believe, Mr. Chairman, that there is no deficiency of these qualifications in our State; and the question then comes up for decision, if these qualifications are essentially necessary to the character of a just and an honest judge, what tenure of office is most likely to secure the services of a man who possesses such qualifications? Because, looking to the interests of the whole public, and looking, more especially, to the interest of the thousand suitors who crowd upon courts of justice, these qualifications are all important to the due administration of justice; and the due administration of justice, we all admit, is of the most vital importance to the existence of our republican institutions. A judge then should be impartial; there should be no ground for attributing to him a bad or a partial motive. Every man knows that when there can be found, even by imagination, a reason wherefore a judge should be partial, that the charge of partiality will never fail, in such a case, to be brought against him; for every man who brings his cause into a court of justice for trial, supposes that it is to

be tried, on the merits and on the justice of the cause itself, and he never doubts that the merits and justice of the case are on his side.

This being the case, Mr. Chairman, the first moral power of a judiciary lies in the belief, in the confidence on the part of the people that a judge will do his duty, between man and man, in a faithful and an upright way. The judge may be honest—he may be impartial—he may be learned—he may be practically free from all bias and all prejudice—and yet the people may impute improper and sinister motives to him, even for just and honest decisions. This is a great evil every where, but a greater evil here, I believe, than in any other country. We should do all in our power to obviate it; we should have no assignable motive of interest for a judge to do wrong. The rules of law are the result of public opinion, not of one age only—but of a long succession of years. They are formed by the super-added wisdom and experience of generation after generation; and they continue after the interests of the parties, and the parties themselves have passed away. We ought then, Mr. Chairman, to have such a tenure of office, as will take away every possible opportunity to impute bad motive to a judge; we ought to have such a tenure, as shall give no ground for a belief, no, nor even for a suspicion, on the part of the people, that the law will be violated in their case; and this is one main ground of argument I have assumed, in relation to the tenure of office, which I am now about to advocate. When a man sees that a judge cannot be affected, either in one way or another, by the decision to be given in his case, he may readily believe that that decision is the result of a conscientious and honorable motive; but when he sees, or thinks he can see, that a judge is to be affected, directly or indirectly, by this or any other decision, the chances are ten to one that he will make the imputation.

Thus we see, Mr. Chairman, that the stability of the law is a matter of vast importance—not to the judges—not to the members of the bar—but to suitors, to those whose cases must abide the judgment of those laws; for a changing law is, and always has been, a snare of the ignorant and unwary. The preservation, then, of the rules of law is necessary to the judiciary; and, to accomplish this object, it is necessary to make the tenure of our judicial offices as permanent as possible. By this term *permanent*, I mean only to say that it is our duty to make the tenure of office as permanent as we can, consistently with the spirit of our other institutions; and consistently with the great interests of the people; that is to say, every principle in our Constitution should be so adapted to every other principle, as to guard against the possibility of the one frustrating the other. But it is, and always must be, a leading object in the formation of a fundamental law, that the rules of property—I mean the rules by which property is to be preserved—should be kept as steady and uniform as the nature of things will admit. This desirable object can best be accomplished by steadiness in the administrators of the law. In addition to all this, Mr. Chairman, experience and practice are as necessary to make a judge, as they are to render other persons in any other pursuit of life, fit for the duties of their particular avocation. Of this fact there can be no doubt; for a man may be a good lawyer—he may be an able advocate—and yet, when he goes upon the bench, he may make a very disreputable judge. It requires time to accommodate a man's mind

to judicial accuracy; because a judicial station requires a peculiar kind of cultivation of the intellect. Thus, a man who possesses talents, learning and impartiality, may yet, when placed upon the bench, have his whole duty to learn—for the simple reason I have stated, namely, that the intellectual cultivation required by a lawyer, and the intellectual cultivation required by a judge, are two distinct matters. A lawyer, for example, may take either side of a case, as he may happen to be retained by one party or the other. The judge, on the contrary, must listen to the arguments which may be advanced on both sides of the question, and must come to a fair decision on the whole. To enable a man to do this, practice, skill, and a command of his faculties, which is not always to be found, are requisite. Such qualities combined, are not always to be found even in eminent advocates, and yet, without such qualities, that uniformity in the law, which is so important a matter to the people, cannot be secured. Men come to the bench with a disposition to give undue weight to different maxims; their course of practice has warped their judgment, and almost every man, when he first takes his seat on the bench, thinks that some things either are, or ought to be law, which have not been so decided. You can do nothing better for the profession of the law—for it is a money making as well as an honorable profession—but if money alone is concerned, I say you can do nothing better for the professors of the law than to render the law uncertain; and, by these means, make it necessary for a man who has been compelled to commence a suit, to go to the ultimate tribunal, before his cause can be finally and rightly decided.

But I have said, Mr. Chairman, that a judge comes on to the bench with a disposition to give undue weight to different maxims, and that almost every man, when first elevated to that office, thinks that some things either are, or ought to be law, which have not been so decided. This, of course, is very much calculated to give a bias to the mind. A man, for instance, who has been in the habit of searching out a fraud—the mere suspicion of a fraud is enough for him, and he would be willing to convict accordingly; whilst another man, to whom such a habit is not familiar, will be apt to make careful inquiry, and to be very slow in convicting. Men thus come on to the bench, with their habits of mind formed and settled, and in such a way as is not calculated to make them good judges. It takes time to make them so. Their old habits must be put aside, and new habits must be formed; all of which is a work of time.

But as to this subject of changes in the law, we have had, Mr. Chairman, some experience. Reference has been made to the state of Vermont. In that state, a change takes place in the judiciary every year; and, the natural consequence is that, as parties change from time to time, the laws of the state change. Thus, for example, a man may be hanged one year, under a law, which the judge, in the very next year, may pronounce unconstitutional; such a case has occurred. The judges of the state of Vermont, and the laws of the state of Vermont, did change four times in four years. One judge declares a certain law to be constitutional, while another judge declares it to be unconstitutional—and each new set of judges that come in, put down the laws which another set of judges have set up.

But, Mr. Chairman, the state of Ohio has also been alluded to. I have in my possession a letter written by a gentleman who stands as high in

character and reputation as any man in the city of Cincinnati, in relation to certain parts of the laws of that state—shewing how they have changed—and how the interests and the rights of suitors have been affected thereby; and affected in many instances, even to their utter ruin. Property, which under one construction of a law, belonged to one man, under another construction of the same law, has become the property of another man. There, the judges are temporary; they are appoidted for a term of seven years. They are appointed to carry out, as it is said, public opinion; and, in obedience to that opinion, they are appointed for seven years. Upon these grounds, Mr. Chairman, it seems to me clear, as a matter of policy, that a longer tenure of office, with the condition of good behaviour, would be the much more preferable tenure for the interests of the people. I speak not now with any reference to party considerations or party views. I speak, as I do not doubt every gentleman here speaks, of what I believe is best calculated to promote the true interests of the people. Believing as I do then, that if the condition of the good behaviour tenure is not now sufficiently enforced, it can be so enforced, beyond any reasonable doubt and in a manner which is above all exception, I am in favor of the retention of that tenure as being best calculated to promote the interests of the people.

But I propose now, Mr. Chairman, to show that this tenure is on the popular side—that it is on the side of popular rights—and that it has been the side of popular rights in the state of Pennsylvania, from the first settlement of the colony up to this day, and I believe, sir, that I can establish this fact in a manner not to be controverted. How does this question arise, and what is its history? It does not arise from any disputes between individuals. It did not, even in England, arise in that way. It arose from a dispute with the government—a dispute between those who appointed the judge, and those who were oppressed by the decisions of those judges. And so it has always been. In England the judges were to be independent of the appointing power; and all we ask here is that our judges may be independent also; that is to say, independent, in reference to every thing but their conduct. And the question is not, such as the gentleman from Luzerne has stated it to be—namely, a question between good behaviour and some other tenure; for, in effect, the very tenure which he proposes is a tenure of good behaviour. It must be so, although such are not the words of his amendment; because he surely would not have a judge that did not behave himself well. It is then, in every essential particular, a good behaviour tenure. It is a tenure of office from which no man can remove a judge, merely of his own free will, and the tenure is, in part, a tenure for the will of the appointee—and not of the appointing power. What were the words formerly used in the commissions issued on the appointment of judges? They were "until our farther will and pleasure shall be known." Now, by this tenure of four or six years, you are about to act nearly on the same principle.

You do not appoint a man, because he has behaved well before—and you do not turn him out because he has behaved ill before. It is an exercise of will alone on the part of the appointing power, and once in the space of every seven or ten years there comes a time when the judge must hold his tenure at the will of somebody or other. Of this point

there can be no argument. I contend then, Mr. Chairman, that the question is not between a tenure for a limited term and a tenure for an indefinite term. The question is simply this—on the one side, we say that the longer a judge behaves himself well, the better we like him, and the more disposed we are to retain his services; whilst, on the other side, it is said, we wish him to behave himself well during the period for which he may be appointed. The difference, then, is between the tenure of good behaviour and a tenure at will; which tenure at will is to be exercised or changed once in every seven or ten years. Let me ask, whether this is, or is not, a popular doctrine? Is it, or is it not a doctrine favorable to the rights of the people? It has been admitted that the introduction of the good behaviour tenure is proper, in the Constitution of the United States. And for this very singular reason; that a judge exercises political power. Why, sir, if a judge possesses political power, he is the better able to defend himself; and, having no political power here, the argument on all these grounds is in our favor. Where political power rests with judges, they can the better afford to be turned out. The people, therefore, ought to have the judges independent; and this independence has always been the first rise of liberty.

In England, it is now, I believe, about six hundred years since the judges became stationary; that is to say, the judges were first separated in some degree from executive power—for, in all Europe, and in all the feudal governments, the judiciary formed a part of the executive power. Till within some two hundred and fifty years, the judiciary has been a part of the executive power. It has been so, in every part where the feudal system was in operation. On the other hand, the ancient republics made the judiciary a part of the legislative power. For, strange as it may seem, it never occurred to them, in those days, that there could be a third independent branch of the government, competent to secure to the people the rights and liberties, against the over-ruling or arbitrary power of either, or both, of the other branches. And this was the great rock upon which all these ancient republics have been wrecked. The judges in England, till within a period of a little more than one hundred years ago, were appointed to hold their office during the will of the king. So we are informed by Blackstone. Another writer, on the same subject, speaks of it in another way, although there seems to have been some doubt as to how far the commissions of the judges ran in that way. The terms of the commission, however, are not very material to the issue; for inasmuch as the king alone decided whether the conduct of the judge was good or bad, the king was, of course, the only power which could supercede him in his commission; and although the tenure was, in terms, during good behaviour, yet it could answer but little purpose, in the face of the power at that time possessed by the king over the commissions of the judges.

In what does this tenure of good behaviour derive its origin? From the attempts made by the King of England to evade the rights of the people. The courts, yes, sir, and the juries also, were, until a short time before this question was settled in the State of Pennsylvania, equally dependent on the crown. The trial by jury, so far from being, as it was designed to be, impartial and free—was often a mere form—an idle ceremony—a net spread to entrap the unwary and the ignorant. In the year 1620, Lord Bacon was appointed Chancellor of England,

and we find that, upon his appointment—or, rather, previous to his appointment to office—he gave a promise in writing to do whatsoever he might be ordered to do; and he made this promise, in order that he might obtain money, because his office was temporary. Such, Mr. Chairman, was the character of the judges appointed by these kings. They were appointed, not for the purpose of exercising their own discretion—not for the purpose of deciding justly between man and man—not for the purpose of administering the laws of the land without fear, or favor, or hope of reward—but for the purpose of carrying out the arbitrary will of the king, whatever the nature or direction of that will might be. They were appointed for the purpose of ministering to the partialities and the prejudices of the man at whose hands they received their appointment; they were the mere instruments, appointed to execute the vengeance of the monarch, upon the man on whom his displeasure or his prejudice might happen to fall.

But there was another great question arose in the year 1637. It was called in England the case of the ship money. Let us look, for a moment, at the history of that case. Before the king levied the ship money, he applied to the twelve judges to know what the law was; and, in the first instance, he submitted to them two questions. The first of these questions was, can the King collect ship money from all persons in his dominions, when it is necessary to do so? And the second question was, is the king alone the judge of that necessity? The whole of the twelve judges signed a paper, answering, affirmatively, that the king could do these things. But how did the king obtain this document? Why, he removed from the bench four of the judges who refused to sign the paper, and he supplied their places with four other men, who were willing to become his supple instruments and tools; and thus, at last, he succeeded in procuring the signatures of the twelve judges to a paper declaring the law to be, first, that the king could collect ship money from all people, and to any extent, when necessary; and secondly, that the king alone was the judge of the necessity of such a tax. This event occurred two hundred years ago. Let us turn our attention for an instant, to the great changes which have been wrought in the opinions of mankind, in the space of two hundred years, and let us see how near to the present times these arbitrary principles have been handed down. Let us see how short a time it is, since the world began to entertain a serious thought as to the enjoyment of human liberty. After the period to which I have referred, there came up a number of state trials in England; and among them, there were some of very great importance. I will refer to one in particular, which took place in the year 1681. I allude to the case of Shaftsbury, in which the court, in order to ensure the finding of a bill, compelled the grand jury to stay in court, and to examine the witnesses in its own presence. For fear that the evidence might not be sufficient, or for fear that the witnesses might tell the whole truth, the court compelled that grand jury to find a bill before the court, and when one of the jurors wished to ask one of the witnesses the question, whether he had been convicted of felony and had been pardoned, the court refused to allow the question to be put. And what was this, Mr. Chairman, but a gross and outrageous violation of the rights of the people? And so it was understood and believed to be at the time it

occurred. And all this was a strife between an absolute monarchy (not even then unresisted) and the spirit of freedom.

But, sir, we need not stop here. Let us look a little farther. I refer to the particulars of the trial of Russell, which took place in the year 1683; being the same year in which William Penn granted a form of government to the then colony of Pennsylvania. Look at that case for a moment, and see how the judges acted their parts in that matter. He was allowed only the period of less than two weeks to prepare himself for trial. He was allowed no counsel to aid him in his defence. He asked for a temporary postponement of the trial; and the court, addressing the attorney general, said, what say you Mr. Attorney General? are you willing to allow a postponement? To which the attorney general replied, that he was not willing; and, on receiving this answer, the court coldly says, well then the postponement cannot be granted. The prisoner asked for a copy of his indictment, and even this was refused him. And what farther? When the jury came to be challenged by the prisoner, in order that it might be ascertained whether they were qualified to serve as jurors or not; that is whether they were freeholders, according to an act of parliament—the court said that he could not be allowed to propound such questions to them; and, although the prisoner stated to the court, that there were men on the jury of whom he had never heard any thing before, yet that very jury were brought into court to try him. Again, the court admitted hearsay evidence; and the law of treason which was passed in the reign of Henry the Third, and which required two witnesses to establish the crime, was shamefully evaded. Such is the history of Russell's trial.

But, in the same year another, trial occurred, which was attended with equal enormities. I refer to the trial of Sidney. There was the same hardship, the same oppression, the same tyrannical abuse of power. I will refer the committee for a moment to the third volume of state trials, page 794; and I shall be glad if the committee will listen to that which formed the ground of the charge of treason against Sidney—and for matter too which he never published. It is as follows:

"The power originally in the people of England, is delegated with the parliament. He (the king) is subject unto the law of God, as he is a man; to the people that make him king, in as much as he is a king. The law sets a measure with that subjection, and the parliament judges of the particular cases therefrom arising. He must be content to submit his interests unto theirs," &c.

And in page 821 of the same book, it will be found that Sidney, subsequent to his conviction, offered to prove that the jury was packed, and that the judges would not allow him to do so. What sort of a tribunal was that? I repeat, Mr. Chairman, what sort of a tribunal was that? How could such a place be called a court of justice? How could such proceedings be tolerated, in times where the slightest regard was had to the rights or the liberties of the people? And what, sir, is the solution of this whole problem? It is, that the judges were dependent on the will of the king. They were compelled, if the king willed it, to decide that there was evidence enough to convict a man of any crime with which he might be charged, and to justify his execution for that crime, however weak or false the charge might be. They

were compelled, in short, either to find a case against the man, or, not finding it, to *make* a case against him. And it was in such a court, and after such a trial, that Sidney was condemned to death, and was executed as a traitor.

But, Mr. Chairman, we can go even farther than this. In the year 1688—being subsequent to the period at which the principle of an independent judiciaary had been established in the State of Pennsylvania, the trial of the bishops came on in England. The particulars of the case were these. The bishops presented a petition to the king, and they were indicted for it for libel; they having presented alone to the king, with their own hands, that which had not been published to the world. The jury who, even at that time, began to feel their independence, acquitted the bishops of the libel; and that very acquittal was, more than any other thing, a cause of the revolution in England, in 1688. It is truly surprising to see the extent of infatuation and delusion to which the King of England went, in his repeated attacks upon the liberty of the people of England; and nothing, save the extraordinary despotism and tyranny practised upon them, could have induced the people of that country—born, as they were, with the slavish ties of monarchy about them, to have risen in their own defence. They did so, at length, however; but not until the evils under which they labored had become so grievous and oppressive, that they could be endured no longer.

McIntosh, in his history of James the Second, says that the king himself assisted in selecting the jury. And, in another part of the same history, (see page 205) we find that the minister interposed in civil suits. The same history states also, that James the Second removed every judge and justice of the peace in Scotland, at one time, for refusing to decide that he could dispense with a law; in short that, by a single stroke of the king's pen, the whole judicial system of the country was abolished.

Sir, when we look at these things, do we not feel bound to say, that it was high time that the people of England should have roused themselves from the slavish lethargy into which they had sunk, and, that they should have asserted their rights as men and as freemen? But, sir, it became a matter of history that, for the first time I presume, there had been an interference of the court in the private transactions of the citizens, and that the minister had applied to the king, and had invaded the authority of the king, on a matter of private right between two individuals. So gross, and so flagrant, had the desecration of the judicial system of England become, that not only those who were offensive to the king might be taken off, under the seeming process and sanction of the laws of the land, but even the minister of the king might interfere with the private rights of the people. This, sir, was an era in the judical system of the world.

I now come, Mr. Chairman, to a case which has a direct bearing on the question before the committee, and upon the interests of the Commonwealth of Pennsylvania. I refer to the case of the King against Penn and Meade, (see vol. 2, state trials, page 610,) who were preachers among the society of Friends. The house in which they had been in the habit of holding their worship, was shut up by the authority of the king. They then seated themselves on the steps and preached to the

congregation in the streets. They were indicted for a riot, and when they came before a jury, how did the jury act? I should mention, however, in the first place, the court ordered the preachers to take off their hats, which they refused to do, and for which refusal they were fined forty marks. The jury were also threatened with being stoned, if they did not give a verdict acceptable to the court. But, when the trial came on, Penn addressed the jury, and he was immediately taken out of his seat. He was taken where the jury could not see him, and the whole trial proceeded in his absence. The judge charged the jury in the absence of the defendants, or, at least, so far off, that they could not hear what he said. And what was the consequence of all this? The jury acquitted the prisoners, and the court fined the jury forty marks a piece, for not bringing in a verdict of guilty; and the prisoners were remanded to jail, until they had paid their fines for defending themselves. I refer to this to show, first, how the jury stood in that case, and to show that it was only from the year 1670, that the independence of the jury in England was asserted and maintained.

It was only thirteen years from these transactions, that these principles were established in the Pennsylvania judiciary. Another reason which had induced him to refer to this matter, was, to show that Penn himself was the discoverer of this principle. He would have been convicted and condemned by the judges, and had only escaped, by having more honest and independent men for his jury. He had witnessed the wickedness of a corrupt court and judiciary. He had felt the effects of their subserviency, and had resisted tyrannny. He was on the popular side, and prepared to defend popular rights, and in 1683 he adopted this principle.

By referring to Harrington's Oceana, page 57, it would be found that a plan was there laid down for obtaining universal happiness and prosperity to the people of the Commonwealth of England; and yet, strange to say, the writer never thought of the independence of the judiciary, as calculated to produce the object in view. This book was published only about twenty years before the settlement of Pennsylvania.

Reference had been made to Lock, who certainly possessed one of the strongest and most enlightened minds, which the world had ever produced. That man wrote a treatise on government, the object of which was to justify the revolution of 1688, and of course after Penn's charter. What does he say? In the second volume of his works, page 230, in describing his form of government, he speaks of the Legislature; and where the legislative powers are abused, the *only remedy is by revolution.*

We have another and a better remedy. The rights of the people here can be protected by an independent supreme judiciary. This power was indispensably necessary. Suppose the Legislature should pass a law, which was clearly, distinctly, and undoubtedly, a violation of the Constitution, and the question should be brought before the supreme court, must not the court declare that law void, or be guilty of a gross dereliction of duty? The Constitution and the law are in conflict; and one or the other must be decided to be void. They are sworn to support the Constitution, and they do not declare that to be void, without a gross violation of their oaths, and without taking away the very rule for their

guidance in the administration of justice. The duty of the judges is to prevent the other branches from overstepping their proper limits. Unless the judges, therefore, were so far independent as not to be under the apprehension of losing their offices, the people could not be perfectly certain of being protected in their rights.

He (Mr. Merrill) had not searched the works of Plato nor Machiavelli; believing that, if Harrington and Locke were ignorant of this principle, no trace of it could be found, previous to its adoption by Penn, in 1683.

Here, allow me to say, has been the development of a great principle in the science of government. In a monarchy, the judiciary was part of the executive power, and to be exercised by the king, or those of his immediate appointment. In republics, the legislative and judicial powers become mingled. In both, justice was perverted. Here is a third power raised up in the Commonwealth, whose judgments decide the proper limits of all; and that they may not act through fear or favor, they are made independent of the other branches, and are deprived of all political power and patronage.

By the form of government agreed upon by Penn in 1683, the judges were to be appointed during good behaviour. In 1701 he gave another form of government, in which it is provided that the Governor shall appoint the judges of the several courts. What did the people do, when they found that their rights on this question were doubtful? In that same year of 1701, this principle was adopted in England, and a judiciary law was passed in Pennsylvania, which was repealed by the Queen in council in 1705. In 1706, the assembly passed another, and the Governor having received his orders, refused to sign it.

He (Mr. Merrill) had obtained a copy of a document from the office of the Secretary of State, which purported to be a conversation between the House of Assembly and the Governor, in 1706. The assembly refused to pass any other law; and, as Proud informs us, they were nine months without any court. The Governor refused to yield the tenure, and the assembly would not surrender to his wish. The courts were then not opened in pursuance of any law, but by the orders of the Governor and council. Mr. Merrill here read the paper of which a copy is given:

"This point was then left, and the Governor proceeded to the clause which appoints the judges to hold their offices during their good behaviour, to which, he said, as before, that in this province, he understood their commissions had always been *durante bene placito*, and no otherwise, and he saw no cause to make an alteration. The Speaker pleaded that in England, the judges held their places by virtue of an act passed in the thirteenth year of King William, as it was now proposed in the bill here. And Judge Nompeson, in his draught for establishing courts in this province, had also done the same, and that, as it now is the people's right in England, so that right followed them here."

"The Governor told the Speaker that he knew nothing of that draught, but desired to know whether any government in America had followed the example, if it were fit to be practiced here, it as much concerned the rest

of her Majesty's plantations, and asked if they ever heard of any such Constitution abroad.

"It was further said, that the mentioned act of Parliament was enacted long after the settlement of this government. So it could not give a right to the people here.

"The Speaker produced a printed piece, called the frame of the Government of the Province of Pennsylvania, containing concessions granted to the adventurers into the said province by the proprietor in the year 1682, at London, by which the magistrates and officers to be by him appointed, were to continue in place during their good behaviour, from whence the people of this place, he said, had a right to what they craved.

"The Governor asked if that frame of government were now in force?

"The Speaker answered—they hoped to prove it to be still in force, at a proper time.

"It was asked if that were now in force, since the whole Constitution there laid down is so differeut from the present, which makes them an assembly, by what power they could at this time act as an assembly, since they are not so according to the Constitution, which they plead is in force.

"It was further desired that it should be explained what was meant by a proper time, in which they might prove that charter to be in force. If it be pleaded here to shew the people's right, what time can be more proper than the present in which the matter is debating?

"The Speaker waived this, and proceeded to plead that it was the people's right—that formerly the judges in England held their offices upon the terms that were desired here; though afterwards, by some means or other it might be changed—that he had heard of some before the enacting of that law who would not accept of the office upon any other terms; that the methods used in the reign of King James, to make the judges countenance his arbitrary proceedings, and the abuses that followed upon them, shewed the parliament, in the following reign, the necessity of putting it out of the power of the government to displace any judge, but for an official misbehaviour—that, by the mentioned act, the right of the people was only restored to them, for it was theirs before, however they had been kept out of it. This if restoration could not be agreed to. But, it was answered that the parliament of England might doubtless have good reasons to have such a law enacted: but the same would not hold here—that in the kingdom there is great choice of good men, but here 'tis difficult to obtain any to accept of the place, for there is no provision made for their support—that they should settle a salary to it, to make it worth the acceptance of a person duly qualified, as 'tis in England, where they have large salaries, and then there might be some more shew of reason for the assembly to direct his continuance.

"The Speaker replied, that such a settlement might be made hereafter by a particular act for that purpose."

"Some of the assembly insisted on it that at some time or other there might also be occasion for it here, as in England—that there, the Queen might be sued, and an occasion might also happen here, perhaps, to have

a dispute with the proprietor or government, and, therefore, it was fit that the judges of the difference should be under no awe, or fear of losing their places.

"The Governor replied, that there had been no inconveniences from this method of holding their places *durante bene placito*, since the government first began, but that very great inconveniencies might arise, as we are circumstanced, if a judge could not be removed, but for an official misbehaviour—that there would be no pretence for removing an able good man, when there is such a very slender choice, and an ill man, that proved so after he came into office, could not be put out of it, without his own consent, to make way for a better, unless such misbehaviour could be fairly proved against him, which might be a difficult point, and therefore might be extremely inconvenient here.

"But the Govornor told them that it had never yet been thus in this province—there had been no justice now administered in the province, nor courts held, for near nine months past, that it was no time now to contend for these privileges, if they accounted them such, and thereby delay the opening of the courts again, for want of which the people were most grieviously oppressed, as if the obtaining of what they craved, in a point that is not essential to the being of courts, must be the very terms on which the country must be admitted to the privilege of common justice.

"The Speaker said he thought a judge was essential to the being of a court.

"The Governor said that he had delivered nothing to the contrary, and *admired* he should pervert his words, in such a manner, that though he knew a judge is essential to a court, yet no man would offer to say that it was essential to the being of courts, whether his commission was to be in force during the Governor's pleasure, or his good behaviour. And, to make this dispute the occasion of withholding common justice from the Queen's subjects, was a great hardship upon them. Besides, it seemed as if the Governor's assent to whatever they thought fit to crave, must be the very terms of the people's having any courts at all.

"The Speaker answered that they made not this the terms of the peo ple's having justice.

"The Speaker after his first standing up, when he presented the house to the Governor, in order to hold the conference, having kept the seat for the first two or three times, he spake, and afterwards at the several times he had occasion to speak—sometimes standing, but often sitting, and at length, continuing to sit altogether, without raising at all, as all the members of the council did, and always do when they speak at the board, to the Governor, and as the rest of the members of assembly, then likewise did, the Governor told him that those that spoke to him, upon such occasions, always stood up—that he must desire him to do the same, for it was necessary, in point of good order, that whoever spoke should stand all the time, which secured him from interruption.

"The Speaker answered, that as he sat there, he was the mouth of the country, being the Speaker of the house of representatives—that he was to take his directions from them, and ought not to be abridged of his liberty.

"The Governor asked what he meant? if he intended by that, a freedom of speech, it was not denied him, for he had it fully; but, that it was necessary for decency and good order, that whoever spoke in a conference with him, should stand at the time,—and then proceeded to argue with him upon the business in hand, which was the better part of what is before mentioned."

"The Speaker made two or three short answers to the Governor upon the same subject, still keeping his seat, and so continued to speak, as there was occasion, without once moving, upon which the Governor told him again that if he spoke to him there, he must stand up, as others did, or otherwise there would not be much notice of what he said, for it was necessity, for the reasons given. The Speaker told the Governor he must desire his excuse, in any thing that lay in his power, he should be happy to pay him all civil regards, but he could not answer him in this. The Governor continued to tell him of the necessity of every man's standing when he spoke, and that he ought to do as others in that case did.

"Upon which the Speaker arose, and said that he was a free agent, and not to be directed by any but the house—that he could continue no longer there, and therefore must break up the conference. The Governor asked what he meant—would he break up the conference upon it? He answered "yes"—he had authority from the House to end it when he thought fit. The Governor asked if he did it then, upon that occasion? He answered "yes," for he was affronted,—so, the whole house raising, departed abruptly with him. As the respresentatives were going, the Governor told them, that they saw how a conference he had appointed for the service of the public was broke off by their Speaker, and upon this occasion, and desired that, accordingly, they should remember it, but they all departed without any further answer.

"Upon their departure, the business being thus broke off, the board adjourned to ten in the morning."

Mr. M. resumed, and stated that he was reminded of a fact, that had not been mentioned in its place. In 1684, the judges were appointed for two years. (See Executive minutes, book A, page 78.) The fact was important in this point of view. That part of the Constitution of 1776, relating to the tenure of judicial office, had been complained of. It was alleged, that it did not work well and fairly, neither as respected the judges or the people. This tenure of office for two years had been tried before, from 1684 to 1701, and we have seen how little the people were satisfied with it.

This good behaviour tenure was most earnestly desired, and most anxiously sought for, by the people, from the first settlement of the country. Penn well knew the evils arising from a judiciary, holding their office during the will of any body, who could remove them, or re-appoint them, or overthrow the system at his pleasure. It became necessary to make a few observations, respecting the different laws which had been passed at different times in order to obtain this tenure. The laws repealed by the king in council, were not printed in the early editions of our acts of assembly. It was necessary to look at the records in the office of the secretary of the Commonwealth. The Convention had heard the argument between the Governor and assembly, as it had

been preserved by the Governor in the executive minutes; and it was not probable that the Governor had given the opposite argument stronger than it really was; and yet undoubtedly the assembly had the best of it. The Governor was clearly driven to the wall, and began to talk of standing up, and forms, and ceremonies, when he had no substantial arguments against the allegations of the other side.

Mr. M. said he referred to these matters, to show that the people of Pennsylvania, then claimed the same rights which the people of England had obtained a few years before. How was that claim answered? By directing attention to modes and forms. Are we now to be treated in the same way?

In 1718, a judiciary law was passed, and nothing being said about the tenure of office, it was not repealed. In that year Penn died, and then the judges, by the frame of government of 1683, ought to have been appointed for good behaviour. In 1727, a law was passed, attempting indirectly to obtain this tenure. It provided for the appointment of the judges of the supreme court with powers and privileges, as full and ample to all interests and purposes, as the judges of the King's bench or common pleas at Westminster. This law was repealed by the king in council. In 1743, the Governor removed every justice of the peace in Lancaster county. The reason is not given by Proud, who states the fact, but the act created a great sensation, and much discontent.

In the second volume of Franklin's works, page 9, was a report made to the assembly from the committee of grievances, in 1756. The editor, no doubt, had authority for putting it among Franklin's works. It complained that this tenure of good behaviour, which had been assured to them by Penn in 1683, had been lost by the misbehaviour of the Governor, the King's agent. Much stress has been laid upon Franklin's opinions, because he signed the Constitution of 1776. It is no more than right to see what he thought on the subject at another time. He could not have taken the commanding sway in the Convention of 1776, which some gentlemen here had attributed to him; at that time he might have been willing to try an experiment, whether the limited tenure would not work better in a popular government, than in a monarchy. At all events, he was a member of the Convention in 1787, which formed the Constitution of the United States; and we do not find any evidence of his continuing to think well of this part of the Constitution of 1776; at any rate, the weight of his opinion now ought to be considered as neutralized.

In 1759, another act of assembly was passed; the first section of which was as follows:

"A supplement to the act entitled an act for establishing courts of judicature in this Province.

For the farther advancement of justice, and more certain administration thereof,

"Be it enacted by the Hon. William Denny, Esquire, Lieutenant Governor, under the Hon. Thomas Penn and Richard Penn, Esquires, true and absolute proprietors of the Province of Pennsylvania, and counties of Newcastle, Kent, and Sussex, upon the Delaware, by and with the advice and consent of the representatives of the freemen of the said

province, in general assembly met, and by the authority of the same:—That, as soon as conveniently may be, after the publication of this act, there shall be in every county within this province five persons of the best discretion, capacity, judgment, and integrity that may be found, and no more, duly appointed and commissioned by the Governor, or commander-in-chief, for the time being, under the broad seal of this government; who, or any three of them shall, and they are hereby authorized and required to hold and keep, within their respective counties, the court of record, styled and called the county court of common pleas, at the same times in the year, and at the same places, as the said courts respectively have been heretofore used and accustomed to be held by the judges of the same, which said judges, or any three of them, shall hold pleas of assizes, scire facias, replevins, and hear and determine all manner of actions, suits, and causes, civil, personal, real, and mixed, according to the laws and constitutions of this province, and shall have, hold, and exercise all and every power, authority, jurisdiction, and privilege, given and granted to the judges of the said county court of common pleas, in and by the act of assembly aforesaid, entitled "An act for establishing courts of judicature in this province," or any other laws of this government whatsoever, and that each and every person so appointed and commissioned, and each and every of the judges of the court called and styled the supreme court of Pennsylvania, shall have, hold, and enjoy, and exercise their several and respective commissions and offices aforesaid, *quamdiu se bene gesserint*, and that their respective commissions shall be granted to them accordingly, provided, always, nevertheless, that it shall and may be lawful for the Governor and commander-in-chief, for the time being, to remove them the said judges of the supreme court and county court of common pleas aforesaid, or any of them from their said respective offices and commissions, upon the address of the representatives of the people in assembly met."

In 1760, this law was repealed by the king in council. So far as he could discover, it was the last law on the judiciary, which had been passed by the Colonial Legislature. The troubles between us and England began shortly after. That law provided for the tenure of good behaviour, with a power of removal in a majority of the assembly. Perhaps that was a wise provision, and if in operation now, might be a remedy for all existing evils. For his part, he had no hesitation in saying that he was willing to go very far to enforce good behaviour in the judges.

The limited tenure of office was not the only objection to the Constitution of 1776. They knew the king had a privy council to give him cunning advice. But, because this was to be a republic, they organized the Executive by a council without a King. The Legislature consisted of a single branch, because there must be no nobility here, and neither in Greece, Rome, nor Venice, had a separate representative body been discovered.

The Constitution of 1776 was made according to the best light and knowledge which the people then possessed. But the march of political, as well as other sciences, had been onward. The council of censors met in 1784, and they recommended a change in all these particulars. The members of this council of censors were as intelligent and patriotic,

as freely chosen, and as fully represented the people of Pennsylvania, as the members of any of our Conventions. With this recommendation fully and fairly before them, for more than five years, the people elected the members of the Convention of 1790. .

Thus, sir, in 1754, a majority of the representatives of the people recorded the proposition to give up the term tenure and adopt that of good behaviour. In six or seven years, it was carried unto effect. I was somewhat surprised at the assertion, that the Convention which was assembled in 1790, did not represent the sentiments of the people on this subject. Did they not represent majorities of the people, and were they not fairly elected? Did they not proceed cautiously and deliberately on the subject? Did they not after framing a system, go home and consult their constituents? Did they not represent the opinions of the people, as repeatedly expressed from the year 1784, to the year 1790? It was the constant struggle of the people of Pennsylvania, to receive the tenure of good behaviour, until it was effected by the adoption of the Constitution of 1790.

I have shown, said (Mr. Merrill,) that the principle did originate with William Penn, and that the people have clung to it, with more strength than to any other principle of their government. Is it not clear then, that it was the decided opinion of the people of Pennsylvania, that it was the proper tenure? In the political struggle of 1805, as he had heard, this was the test, and that party which was opposed to any change of tenue succeeded. There were those here who knew this fact, and would bear him out in it. This being the fact, is it not a still farther, and a very strong proof, of the determination of the people of Pennsylvania to adhere to this tenure? In 1825, when the question was again tried, a majority could not be obtained in favor of a Convention, without submitting the changes to the people. They decided to adhere to the Constitution of Pennsylvania. But still it was said that this Constitution never had found favor with the people. Sir, the people decided in favor it in 1825. They retain it still; and we would not have been here discussing it now, if the people of Pennsylvania had known that we intended to avail ourselves of the opportunity to break down their judiciary tenure. If the people had known that this was our object, they would never have suffered us to assemble. I have shown, sir, that the popular struggle has always been in favor of the principle of this Con stitution, in regard to the judiciary, and the popular opinion is still in its favor. It was adopted by them, and they will not surrender it now.

This historical narration, in reference to the means of forming a correct opinion on this question, has cost me no small trouble, but it was proper and necessary to go into it, in order to form a correct decision on the subject. It came on the track of these facts unavoidably, and followed it out. Having no doubt of their truth, I challenge any scrutiny in regard to them. Let any one, who can, indicate a single error in the statement. But if the narrative be true, if every one considers them to be true, then I trust they will be prepared to go with me in following out, and retaining, the present principles of Pennsylvania. I ask gentlemen to investigate, to search the record, to ascertain what are the facts; and I assure them that they will find them as I have stated them, and they must be conducted by them to the same conclusions to which I have arri-

ved. But it has been said that this principle, though very good for a monarchical government, is anti-republican and not suitable for our Constitution. In his opinion, gentlemen were mistaken on this subject. Do I exhibit any want of confidence in the people, or any disrespect to them, when I doubt the propriety of weakening the judiciary? The people have their rights: but if they have any Constitution at all, they should have one that will protect the minority; for the majority can always take care of themselves. Who was the tyrant of France? The people, at one stage of the revolution. The rights of the weak, as well as of the strong, must be properly secured, or we shall not properly do our duty. I agree, sir, that the people should make all the laws; but the majority and the minority have equal rights under the law. The due and impartial administralion of justice must be received in the courts. It is as plain as any proposition can be, that the freedom of every free man depends upon the administration of justice in the courts of law. If justice could not be received in the ordinary tribunals, it would be idle to have any constitutional government, and popular interference in the administratien of justice is just as destructive of private rights as any other interference whatever. I will refer to a few historical facts, in order to show what has been the experience of the world on this subject. Athens lost her liberty by an unjust judgment. For what reason was Marius received by Rome? It was because the people could not get justice in the courts. Life, liberty and property, depend upon the administration of justice. No people can long be free without a practically independent judiciary. The people who make the laws, should not have the control of their administration, lest they should work injustice. How was the failure of the French revolutionists caused? They made a perpetual legislature, but they forgot to establish the rights of the people in an independent judiciary, and they failed. The French did not forget it however, after the restoration. They exacted from Louis an irremoveable judiciary. When they received their king, though the power of all Europe was present to overawe them, they insisted upon the adoption of this principle as a condition. So, after the battle of Waterloo, they would not suffer him to come back without confirming the charter of 1814, which renders the judiciary permanent, during good behaviour. The inviolability of the judicial tenure was secured—that is, with some proper exceptions. In a popular government, justice must be impartially administered, or liberty is not safe: and the most destructive of all interference is popular interference, in matters relating to the administration of justice. Let us refer to the case of Pontius Pilate. Let us read that account, and we shall see very strongly pictured, the danger of permitting popular interference with courts of justice. It is evident that Pontius Pilate wished to do justice, if by so doing, he could hold his office. "I see no harm in him," was his reply to the clamorous accusations of the Jews. He was compelled to yield to the popular impulse. The diecemvirate was destroyed for its unjust judgment. Virginius, after sacrificing his daughter, to prevent her falling into the hands of the person whose slave she had unjustly been declared to be, ran with his bloody knife to the army, who took possession of the city, and overawed the government. No other remedy was then to be obtained, for there was no law but that of the strongest. I might refer to hundreds of cases which were tried in England, of persons arraigned for participation in

treasonable plots; and to many cases, where there was a gross popular delusion, which having taken possession of the public mind, overcame and influenced the judges. There were cases, as every one knew, in our own courts, where a gossiping interference with the administration of justice, was productive of great mischief. This was more the case in small, than in large counties. In Philadelphia county, perhaps it was not felt. But in the small and thickly settled counties, we not unfrequently find the causes decided before they come into court. Where would be the security for liberty, if the courts could not do their duty, without reference to popularity? In England, there is no danger, except when the rights of the subject come in conflict with those of the crown. Here, the danger is of a conflict between private rights and the feelings and impulses of a popular majority. When popular opinion is here excited against a man, then he feels the want of an independent judiciary, to stand between him and the people. If we are to have a Constitution, what will it be for? What is its object, unless it be the protection of the weak against the strong—the protection of those who can have no other protection? The strong have no need of a Constitution, because they can protect themselves. Have I not shown that popular governments depend upon the due administration of justice; and that any defect in the judiciary, is more dangerous in a free government than in any other?

Should the judges become party men, and act with a view to party interests, what is to become of the due administration of the law? But what is to prevent the judges from becoming party men, when they are made dependent for their office upon the will of parties? There will always be men ready to take from them their situations upon a party plea. Their administration of justice, must be of such a character as to please the dominant party, or they must lose their situations. For these acts there is but one remedy, and that is to appoint the judges during good behaviour. In high party times, even if a man did his duty without offence to either party, he would be dismissed as utterly worthless, for the very reason that he is of no use to either party. A judge, in this way, is forced to favor one party or the other, and will be influenced to throw his weight into the scale of the stronger party. It is of the utmost importance, that the opinions and acts of a judge should be respected, and treated with fairness and candor. But if he has three or four men, all eager to succeed him, who are diligently exerting themselves to misrepresent every thing he does or says, it will be impossible for him to stear clear of giving popular offence, by a just and upright course. There will be a continual effort to prejudice the appointing power against the incumbent. When the trial of a cause, in which one of these strong party opponents is concerned as council, comes before this judge, do you suppose that he will be inclined to look upon him with any favor, or with as much as if he had no rivalry with him? Or if he does view his case with an equal and impartial eye, will the defendant believe it? Will not the client say that the judge visited the offence of the lawyer upon him? Great injustice must be done, if we permit such a state of things. Party men will be appointed to office; and they will have the strongest inducement to remain party men, if their term is to be a short and limited one. There will be a constant struggle on their part, to keep their place, and a continual effert to undermine him.

Sir, we have a country where liberty must be defended and protected, either by force or by law. If we lessen the power of law, we must resort to the force of arms. If the law will not protect men, they must and will protect themselves. Men will stand upon thier rights. We regard a standing army as incompatible with civil liberty; our militia system was desirable, and if we should destroy the judiciary, our only hope of protection must be in the strong arm of desperation. We might as well say that we shall require no courts, as that there will be no danger of unrighteous judgments, under the proposed short term system. What have the people who are to come after us, done, that we should now deprive them of rights which we have ever enjoyed? How have they surrendered the right to possess an independent and impartial judiciary. Have the people said that they are willing to part with these or any of these rights? No. They sent us here to strengthen and fortify their rights; and he put it to every man here, if there was not danger, should this measure prevail, of a radical destruction of the most important rights which are claimed and exercised by a free people. He looked upon it as a solemn surrender of these rights. We have rights, and public opinion on our side. We have long generations of our predecessors insisting upon the prosecution of this tenure as their main stay. Are we prepared then on a mere theory, to give a blow, and a perfectly fatal one, to our liberties.

The committee then rose, and reported progrsss; and,

The Convention adjourned.

TUESDAY AFTERNOON, October, 31.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'Sherry in the chair, on the report of the committee to whom was referred the 5th article of the Constitution.

The question being on the motion of Mr. Woodward, to amend the report by striking out all after the words "section second," and inserting the report of the minority of the committee.

Mr. Dickey, of Beaver, moved to amend the amendment by striking therefrom all after the word "court," in the first line, and inserting in lieu thereof the following, viz:

"Of the several courts of common pleas, and of such other courts of record as are or shall be established by law, shallbe nominated by the Governor, and by and with the consent of the Senate appointed and commissioned by him. The judges of the supreme court

shall hold their offices for the term of fifteen years, if they shall so long behave themselves well. The president judges of the several courts of common pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves well. The associate judges of the court of common pleas shall hold their offices for the term of five years, if they shall so long behave themselves well. But for any reasonable cause which shall not be sufficient ground of impeachment, the Governor may remove any of them on the address of two-thirds of each branch of the Legislature. The judges of the supreme court and the presidents of the several courts of common pleas, shall at stated times receive for their services an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit under this Commonwealth."

Mr Dickey said, it was not his intention to address the committee at this time; he had thought the present a good opportunity to bring his proposition to the view of the committee. He was not in favour of either the report of the majority, or that of the minority of the committee. In the last, the terms are fixed at periods much too short. The Legislature should fix the number of the judges of the courts of common pleas and other courts of record. He merely desired to offer his amendment at this time, that it might be in the view of the committee.

Mr. Dickey asked for the yeas and nays on his amendment, and they were ordered.

Mr. Read, of Susquehanna, called for a division of the question. He was opposed to that part of the amendment, which enlarges the term of the judicial tenure, and in favour of so much as leaves out the proviso which was contained in the amendment of the gentleman from Luzerne. If the amendment were susceptible of a division, so as to accomplish his object, he would be glad to have it divided.

Mr. Dickey said he had already stated that he had no disposition to address the committee at this time. He could not vote for the report of the majority of the committee, because he was in favor of abolishing the life tenure. But there is a great principle laid down in the declaration of rights, which I and my constituents are desirous to preserve. I mean the independence of the judiciary. I am desirous to prevent the laws denial, or the laws delay: and in favor of preserving the right of the citizen to enjoy life, liberty and happiness. While therefore, I will go with the gentleman from Luzerne, and the minority of the committee, in favor of fixing a term of years, to take the place of the life tenure, I am not in favor of fixing the terms too short, so as to have the fears of the judges operated on, or to affect the decisions of our courts of justice. All the experience we have, teaches us to preserve the independence of the judiciary. In the State of Indiana, a person could not be got to accept the station of supreme judge, because the terms are too short, and the salaries too low. The term was the same in the amendment offered by the gentleman from Luzerne. The salary is higher than in Indiana, but still the salary is not sufficient. Judges have been compelled by the inedequacy of the salaries, to leave the bench, and to go back to the bar. Judge Shaler did so in the west. There was also such a case in the

state of New York. A judge, who had presided in the supreme court of that state, for nine years, declared that he lost $1000 a year, and he left the bench, and went to practice in the same court. These lessons teach us that we cannot get judges to fill the office for so short a term as seven years. There is not a member of the bar who has an established practice, who cannot make more money than a judge limited to his short term, and $1,600 a year. If we extend the term to ten years, we may find persons to accept the office. My reason for saying this is, that in the western district courts, the Legislature have increased the term to ten years. When they were established, the term was fixed at three years. At the time of the expiration of the district court in Philadelphia, although the decisions were not affected, such was the delay, that suits could not be determined. The laws denial or delay ought to be prevented; and if the shortness of the term produced that denial or delay, it was wise in the Legislature to remove the evil by lengthening the term. The term was extended to ten years, and the consequence is, that the bench is filled by able and judicious men. If the term had been continued at three years, men of this character could not have been obtained; and I am not now willing to run the risk which we must incur, if we make the period so short as is proposed in the amendment of the gentleman from Luzerne. This is my reason for desiring longer terms. Farther—the weak point in our judiciary, is in the courts of common pleas, which come immediately in contest with the people—not as regards political feelings—but as relates to individual passions. We all know that, whenever a judge sets aside the verdict of a jury, he invariably gives offence to one of the parties. Lawyers of eminence will not accept of these offices for a short term, because they are not willing to make enemies. Were it not that errors may be committed, I should be reluctant even to go for so short a term as ten years. If it were not probable that errors may have to be corrected, I would not favor a term of less than fifteen years. The judges might then be able to retire from the bench at about sixty years of age. As to the associate judges, it may be of somewhat less consequence, although still important; their places however, may as well be supplied by one as by another. But in the court of common pleas, and in the supreme court, it is requisite to have judges learned in the law. Not long since, the courts did revolutionize, so far as relates to land titles, the part of the State which I represent, north-west of the Allegheny and Ohio. They did undertake to reverse the decisions of thirty years. Since that time, they have found out their error. and been obliged to reverse their own decisions, and to go back to the principle, which had been previously settled. Innovations of this kind are important to every individual of the Commonwealth. While we are about so well to carry out what has been so ably presented to the committee by the gentleman from Luzerne, let us be careful that we do not fall into the opposite error. For this reason, he would prefer that the amendment should specify fifteen years as the term, instead of seven. As to the associate judges, I am more indifferent. One could as well perform the duty of a associate as another. But it is far otherwise, when we come to touch courts, which require judges learned in the law. In reference to the number; the exigencies of the State, the increase of wealth, and other circumstances, may render it necessary to make a corresponding increase in the number of judges that should sit in bank. I

have an objection to have this principle unsettled, when by an amendment we can place it on a satisfactory basis. I did not offer the amendment in the expectation of causing any delay. I had intended merely to submit it, and to move for the printing, when we come into the house, in order that members may have it before them for examination and reflection.

Mr. READ had been disposed to call for a division of the question, to end with the words "behave themselves well," in the twelfth line. As however, he understood the gentleman from Beaver, to substitute his amendment for the whole of the amendment of the gentleman from Luzerne, he was cut out from having this division of the question. He should therefore not now call for a division, but content himself by voting against the amendment of the gentleman from Beaver, and then take his chance of getting such amendment to the amendment of the gentleman from Luzerne, as would strike out the whole of the proviso.

Mr. DARLINGTON did not suppose he could throw much light on this subject; and would merely state, so that his vote might not be misunderstood, that he would vote for the amendment of the gentleman from Beaver, because he preferred it to the amendment of the gentleman from Luzerne. His mind however was firmly fixed in favor of the tenure for good behaviour, and although he should vote for the amendment to the amendment, yet he would hold himself at liberty to vote against both afterwards, and in favor of the tenure for good behaviours.

The question was then taken on the amendment of Mr. DICKEY, and determined in the affirmative,—yeas 63, nays 51, as follows:

YEAS—Messrs. Agnew, Baldwin, Barndollar, Barnitz, Bell, Brown, of Lancaster, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Craig, Crum, Cunningham, Darlington, Denny, Dickey, Dickerson, Dillinger, Farrelly, Forward, Gearhart, Harris, Hastings, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Kerr, Konigmacher, Lyons, Maclay, M'Call, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Myers, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Riter, Royer, Russell, Saeger, Scott, Serrill, Sill, Stevens, Thomas, Todd, Weidman, Young, Sergeant, *President*—63.

NAYS—Messrs. Ayres, Banks, Barclay, Bedford, Biddle, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clarke, of Indiana, Crain, Crawford, Curll, Darrah, Donagan, Donnell, Earle, Fleming, Foulkrod, Fry, Fuller, Gilmore, Grenell, Hayhurst, Helffenstein, Houpt, Hyde, Ingersoll, Kennedy, Krebs, Magee, Mann, Martin, M'Dowell, Miller, Overfield, Purviance, Read, Rogers, Scheetz, Sellers, Shellito, Smith, Smyth, Sterigere, Sturdevant, Taggart, Weaver, White, Woodward—51.

Mr. FULLER then proposed to amend the amendment in the 9th line.

The CHAIR said it was not susceptible of amendment, it having been an amendment adopted by the committee.

Mr. FULLER then gave notice that he should move an amendment, when the proper time should arrive, providing that the associate judges should be elected by the people for a term of five years.

Mr. EARLE then called for the yeas and nays on the amendment as amended, which were ordered.

Mr. BELL said it must be obvious when the gentleman from Beaver moved this amendment to the amendment of the gentleman from Luzerne,

that he did not entertain the expectation, nor did any member of the committee entertain the expectation, that the final vote would be taken upon it this afternoon. It was to him also obvious, that the gentleman who proposed that amendment felt himself called upon suddenly, unexpectedly, and without preparation, to address the committee on the subject contained in the proposition. That proposition contains some important changes from the amendment which has been before the committee for several days, and the vote just taken upon it may be a vote of intelligence, and it may be the vote which will be given, after all the reflection which this important and momentous subject is deserving of; but certain it is, that the discussion is likely to be cut off very unexpectedly, and he was thus called upon suddenly in the committee of the whole, to decide, and say whether the tenure of the judicial officers shall be changed or not. He had expected before he would have been called upon thus to vote, to hear much able argument, and have his mind enlightened on the subject. He expected at least to have heard his very talented friend from the county of Philadelphia, (Mr. Ingersoll) and to have received much information from him. He was therefore about to submit a motion to test the sense of the committee, as to whether they were ready to decide this question now or not. Mr. B. therefore moved that the committee rise, which motion was disagreed to.

Mr. Clarke, of Indiana, said that in the present state of the question, he found himself in a position which he would rather not be in. He was called upon to give a vote which, on the face of it, would appear to be contrary to his expressed opinions; he should however do what he considered to be his duty, notwithstanding what the appearances might be. He was in favor of taking away from all offices the tenure for good behaviour—life offices, as they are generally termed, and very properly so termed. He had listened very attentively to the argument used to show that life offices, or offices during good behaviour, were necessary for the independence of the judiciary. Now he was as much in favor of the independence of the judiciary, as any gentleman here, but he did not believe that life offices were necessary to preserve that independence. He did believe that an honest man, a man of moral courage, and such a man as was fit for the bench, would be as independent for one, two or three years, as though he were appointed for life; and he believed, when that honesty, integrity and moral courage was wanting, that no tenure of office would give independence. Solomon says that what is wanting cannot be numbered, and he believed that when there was a deficiency in a man's mind, you cannot make it up by any artificial means. He believed these offices ought to be limited to some reasonable time, so that the people might have an opportunity of judging of the manner in which they fill their offices.

It is because they want this tenure that I shall vote against the amendment. It is altogether too long. Commission your judges for fifteen years? You might just as well commission them for life. At what age are men generally appointed to the supreme court? A gentleman has told you that the age is about forty-five; and if you add fifteen years to that number, you will bring a man to the age of sixty. Is not this nearly the same thing as if you appointed a man for life? It is known to us that in the state of New York, the age at which a man is held eligible for this

high judicial station is limited to sixty years. If we were to do as New York does, it would amount to about the same thing as giving a life tenure. But I am not prepared, Mr. Chairman, to make a speech on this subject. I did not intend to have spoken, and should not have done so, but for the position in which we were unexpectedly placed, in consequence of which, a question is now before us which we were not prepared to meet. All of us were prepared for a very wide discussion of this subject; but now, as it seems, we are likely to get at the question at once. I do not myself regret that this is the case, but I should have been glad to have seen the question taken, first, on the judges of the supreme court—next, on the president judges of the courts of common pleas—and then, on the associate judges—whether they should be elected or appointed. As the matter now stands, however, we are precluded from making any amendments, or of trying the question separately. The better way, therefore, for those who wish that the question should be taken separately, would be for them to vote against this amendment to the report of the committee. Those who are in favor of the tenure during good behaviour will, as a matter of principle, vote against this amendment; while those who wish a different course—either as to the judges of the supreme court, or as to the president judges of the courts of common pleas, or as to the associate judges, will act wisely, in my judgment, to vote against the amendment also. We shall then be left precisely where we were when we began; that is, we shall be left precisely where the Constitution of 1790 leaves us; and thus, when we go back to the point from which we started, gentlemen will have it in their power to move an amendment in relation, first, to the judges of the supreme court—and then, upon the president judges, and then, upon the associate judges—and we shall be enabled, in this manner, to get at each question separately. But here, we are compelled to take the whole together—the good and the bad—whether we like it or not—or whatever our own opinions may be in regard to it, and although I may be placed in the situation of appearing to vote in favor of the life offices—to which it is known I am entirely opposed—I am, nevertheless, compelled to do so, in order that I may once more get the question into such a position as will enable me to vote, according to my true sentiments and opinions. I merely rose, Mr. Chairman, to call the attention of those who are in favor of abolishing these life offices, but who are not in favor of the amendment in all its parts, to the singular position in which the gentleman from Beaver, (Mr. Dickey) has placed us, and to tell them that they had better vote against it—because, by so doing, we shall, as I have stated, get back again to the Constitution of 1790, and we can then introduce such amendments as we may think proper. If, after every trial, the majority of this body deems it right to settle down upon the grounds assumed in this amendment—why, so be it. But, so far as my own individual opinions are concerned, its features fall very far short of that which I am desirous to secure.

Mr. Dickey said, that it was very clear to his mind, from the vote which had just been recorded, that a majority of the committee were decidedly in favor of the principle of fifteen and ten years, in preference to that of seven and ten years.

His friend from Indiana. (Mr. Clarke) with a vote of sixty-three yeas, to fifty-one nays, staring him in the face, could not deny the fact, and

whatever the final vote on this amendment might be, he (Mr. D.) hoped that those gentlemen who preferred the principle of fifteen years as the tenure of the judges of the supreme court, and the tenure of ten years for the president judges of the court of common pleas, would continue to vote in favor of the report of the committee as amended, and would not be deterred from so doing by the observatious which had fallen from the gentleman on his left, (Mr. Clarke) however well calculated the observations might have been to produce that effect. It had been well observed by the gentleman from Chester, (Mr. Bell) that, when he (Mr. D.) offered this amendment, he had not expected that the vote would be taken upon it to day. He had offered it, in the apparent absence of all desire to speak, and merely with a view to give the Convention the choice of taking the vote, that he had offered it. The result—which he had no doubt was very unexpected to the gentleman from Indiana—was, that the amendment was carried by a vote of sixty-three to fifty-one. And he (Mr. D.) was yet in hopes that the sixty-three members who had voted in favor of his amendment, would vote also in favor of the report of the committee as amended. He believed the proposition was best calculated, in its present form, to meet the views of a majority of the committee.

Mr. Martin moved that the committee now rise—which motion was rejected.

Mr. Bell inquired of the Chair, whether it would now be in order to move to amend the amendment, by adding a proviso at the end threof.

The Chair said such a motion would be in order.

Mr. Bell then moved to amend the amendment, by adding, at the end thereof, the following words:

"Provided, That after the ratification and adoption of this Constitution, the Governor shall, by and with the advice and consent of the Senate, reappoint one of the then existing judges of the supreme court, for the term of three years; one of them for the term of six years; one of them for the term of nine years; one of them for the term of twelve years; and one of them for the term of fifteen years."

Mr. Porter, of Northampton, suggested to the gentleman from Chester, that it would be better to leave these matters of detail to be settled in the schedule, which would be appended to the Constitution, when finished.

The question then recurring on the amendment to the amendment:

Mr. Dickey said, he had a single observation to make in support of the remark of the gentleman from Northampton, (Mr. Porter) in reference to his own amendment. When he (Mr. D.) drew up that amendment, he contemplated that, whatever action might be had in relation to the present judges of the supreme court, that action ought to be settled, as the gentleman from Northampton had suggested, in the schedule to the Constitution. It would be indispensably necessary to make a schedule, and he thought it would be improper, at this time, to divert the attention of the committee from the one grand question before them, in order to discuss a matter which formed an appropriate part of that schedule.

Mr. M'Dowell said, that he had risen for the purpose of making a sort of apology to the gentleman from Chester, (Mr. Bell) for voting against his amendment. He (Mr. M'D.) did not understand the effect of the pro-

position until it had been explained by the gentleman from Adams, (Mr. Stevens.) He liked the principle of the matter, but was not satisfied as to matters of detail. He was opposed to the idea that all the judges of the supreme court, and the judges of the courts of common pleas, should be put out of office at one and the same time; but he had no idea of making a periodical matter of the whole judiciary.

And whilst he was up, he would say one word in reference to the amendment of the gentleman from Beaver, (Mr. Dickey.) And he (Mr. M'D.) addressed himself now to the friends of reform in this body. He was one among them; he was a member of the reform party in this house, and, as such, he invited gentlemen now to come to the support of this amendment. If he had not taken a wrong view of the subject, he understood the friends of reform here, to be contending for a matter of principle; and it seemed to him to be a matter of no great importance to those who contended for the abolition of the tenure of good behaviour, or the life office, as it was termed, whether the period was for the space of five or ten years. The great matter was to secure the principle for which they were contending, and, having once secured that, he thought sufficient would have been gained to answer every essential purpose. It would be in the recollection of the committee, that, as early as the 18th of May, 1837, he had offered to the consideration of the Convention the following resolution, to wit:

"*Resolved*, That the second section of the fifth article of the Constitution be so amended that the several judges of the supreme court shall hold their offices during the term of fifteen years, and that the several president judges of the court of common pleas, oyer and terminer, general jail delivery, orphans' court and court of quarter sessions of the peace, shall hold their offices during the period of ten years."

This, (continued Mr. M'D.) was the resolution which I offered at that early period of our deliberations, and I do say now, that it becomes the friends of reform—after those who have been the adherents of life offices have conceded so much—after enjoying, as we have done, the benefit of a good dinner—and being here altogether in good humor—as I trust and believe we are—I say that, in my opinion, it becomes the friends of reform to make some concession also. The gentlemen on the other side have come out like men, and I think that our friends should not be less magnanimous than they are. I ask this as a concession. I ask it from those who are in favor of reform. I ask them to come boldly forward, and to meet the gentlemen on their own ground. It is a matter of much importance, that there should be as much unanimity as possible in all the acts which may be done by this body. And I think it is nothing but reasonable, nothing but fair, after the conservatives (the radical-conservatives, so to speak) have thought proper to make this manly concession, (for it certainly is a manly concession) that there should be a corresponding spirit of concession manifested on our part, and that we should forego our own predilections as to the five, two and three years, in order that we may, as I have said, meet them on their own grounds. It is for this reason that I again appeal to gentleman—the friends of reform in this Convention—to those who are in favor of the abolition of the life tenure, and of the establishment, in its stead, of the tenure for a term of years, to come forward now and vote in support of the proposition of the gentleman from Beaver. We shall thus have gained our point—we shall have

secured our principle—and, so far as I am concerned, I do not ask for more.

Mr. Brown, of Philadelphia, said, that he did not wish, at this time, to enter into a general discussion of the merits of this question. It had been truly observed, that the committee had been thrown out of its regular course, by the amendment which had been proposed by the gentleman from Beaver, (Mr. Dickey.) That amendment, said Mr. B. has come upon the committee without any previous expectation on our part. It has taken us by surprise. We were now, for the first time since the meeting of this Convention, discussing a great principle, which, we were led to believe, was considered by all parties, to be of the first importance. Scarcely had the discussion commenced—scarcely had the members of the Convention brought their minds steadily to think upon it—before we are thrown aside from our course, to discuss questions as to the formation of the courts, the particular terms of years, how many judges there shall be, and how they shall be turned out. These were matters for after consideration, or, probably, for previous consideration. It would have been well to have arranged them at first, and to have arranged them on clear and distinct grounds. But, sir, we are not in a position to attend to them now. I have before me the votes upon this question. I refer to them for a moment, without any intention or desire to animadvert upon the conduct of any gentleman here. I do not suppose, however, that a majority of the gentlemen who desired to establish this tenure for a term of years, intend to vote for it now. Reference has been made to a concession; but, as the question presents itself to my mind, I cannot look upon it in the light of a concession. The gentlemen who have gone for the life tenure will still do so. The question, on an intermediate tenure, came up between the tenure of fifteen years and ten years, and it has been decided in favor of the longer term: a tenure of fifteen years is nearly equal to a tenure for life. A judge is seldom appointed before he is forty years of age. Add fifteen years to this, and you bring him to fifty-five years of age, when he will be too old for re-appointment.

What is the principle involved in this inquiry, but the principle of a term of years? What is the question on which we have to decide? It is the broad question between responsibility and irresponsibility. It is a question whether there shall, or shall not, be a power in the Constitution of your state, or in your government under the Constitution, which is to be cut loose from all human authority and restraint. This, sir, is the plain question—it is the question of a tenure for a term of years; and there is no other question, save that one, involved in this inquiry. It is in vain to seek to evade it. It must be met, and I, for one, am here for the purpose of meeting it. I am not here to turn out a host of old judges, simply to make room for a host of new ones—who, like the first, may live another life, before we can remove them. Sir, I will sanction no such absurdity.

Charges have been made, Mr. Chairman, in the progress of this discussion, as to the motives which govern the conduct of those gentlemen, who are desirous that a reform should take place in the judiciary of our State. I, sir, am no disappointed suitor. I am no lawyer, mortified at defeat in a case in which I might have been engaged. I am here, on behalf of the people of Pennsylvania; I am here, to endeavour so to amend

your Constitution, as to make it accord with the principle, that the people are fit to say who shall represent them on their judicial benches, and that such persons as may be selected for that office shall, within a reasonable space of time, go back to the people for their approval or rejection. It is the only means which the people have of saying, whether that which has been done in their name, has been well done, or not well done. I shall vote, Mr. Chairman, against this tenure entirely. I will not go back to those who have sent me here, that I might give them bread—I say, I will not go back, and give them a stone. The people of the state of Pennsylvania, from the time of the establishment of the Constitution of 1789–90, or, at least, within four years after that period—voted against this tenure, and, rather than I will vote for the tenure now proposed—rather than I will consent thus to trifle with their just wishes and expectations—I will let them still go on and complain. I will leave it with them to call together another Convention, who will give them what they want; but I will never be instrumental in giving them that, which they not only do not want. but which stands in direct opposition to that which they have asked at our hands. I call on the friends of reform in this Convention, to go against this amendment—I call upon them now to vote it down. When this is once done, we shall then have it in our power to commence the work anew. And, if the friends of reform are, in truth, desirous of reform; if they are, in truth, opposed to this life tenure; if they are sincere in their professions, they will now go with those who are disposed to take this objectionable feature out of the Constitution, and will go in favor of a tenure for some reasonable period of years. If there be any one principle settled in the state of Pennsylvania, it is that the judges of our courts should be held responsible.

In the districts of Pittsburg and Lancaster, the term had been fixed at seven years. And we have seen that in these courts they have as good judges, as are to be found in any other parts of the state. In Philadelphia, he was informed, there was great difficulty in getting the term extended to ten years. Yet there was no complaint of any delay of justice in that district.

I know no man will say that the judges of the district courts in the county of Philadelphia, are less independent than the judges of any other courts in the Commonwealth. None will say so. And we have ample experience to shew that these courts, where the judges are thus responsible, are as good as are to be found any where in the Commonwealth.

But I will not, at the present time, Mr. Chairman, continue the discussion; because, if when we shall come into Convention, no other gentleman does so, I shall make an attempt to get back to the point from which we originally started. If we give our votes now, in favor of the amendment of the gentleman from Beaver, we cannot touch upon this subject again, until it comes up on second reading, in Convention. The no means of reaching it, or striking any part of it out. I trust that the report of the committee will thus have been amended, and we shall have friends of reform, or those who are in favor of a less term of years than that mentioned in the amendment, will vote against it. I know that it is a question now between a limited and an unlimited tenure; but it is a question on a tenure so large that we do not wish to have it. I hope, at least, that no friend of reform will vote in favor of the amendment, until

it is clearly demonstrated that no other proposition can receive the sanction of this body.

Mr. Darlington, of Chester, rose, and proceeded to state that he should feel constrained to vote against the amendment which had been proposed by his colleague, (Mr. Bell) for the reasons which he would briefly assign; when Mr. Bell rose, and said that he would save his colleague, (Mr. Darlington) the trouble of making any remarks on the subject, by withdrawing his amendment.

And the amendment to the amendment was accordingly withdrawn.

The question then recurring on the report of the committee, as amended:

Mr. Earle rose and said, that he believed the friends of reform stood in great need of caution and prudence in their actions in this Convention. They had an able and a crafty opposition to contend with—an opposition which formed its plans in secret, and carried them out with wisdom and energy. The efforts of that opposition were directed to two special objects; the first of which was, to make all the amendments to the Constitution of such a character that the people would reject them; or, secondly, that if the people did not reject them, no relief would be afforded by them. And thus the people would have the *show* of a new Constitution, with all the objectionable features and practical evils of the Constitution of 1790. They would have the shadow, and not the substance of reform.

He asked if there had been an argument advanced on either side of the question? Had the gentleman from Philadelphia, or the gentleman from Luzerne, (Mr. Woodward) brought forward any thing like an argument? Not a single argument had been advanced, why a judge should hold his office for fifteen years. If any could be, he had some curiosity to hear it, for it would be something new under the sun—something that he had never heard before. What principle, he inquired, could be laid down for such a tenure? The gentleman from Philadelphia, had laid down the principle, that the judges should be independent—that was, irresponsible, as he (Mr. E.) understood it, and he knew no other irresponsibility except an irresponsible judiciary. To say that honesty was independence, was an insult to the understanding. It had been argued that the appointing of judges for five, six, seven, or more years, was not to render them independent. Agreed: it was not our object to make them independent. Every man who was independent, had the privilege of being a tyrant—of perverting justice, and was accountable to no one.

Your judges, then, should not be independent, but rendered accountable to the people, or to the Legislature. He hoped that no man, who held democratic principles would vote for the independence of the judiciary; and, on the contrary, trusted that they would go for the honesty and impartiality of the judiciary. What was the course of the argument adopted on each side of the Convention? On the other side, it was contended, that the judiciary ought to be independent of the Legislature, in order that it may decide on the unconstitutionality of laws. At the proper time, he would endeavor to show that there was nothing at all in this argument—that it had no good foundation to rest upon. He would also show that there was nothing in a short tenure, to prevent any judi-

ciary from declaring laws unconstitutional. A judge, appointed for five years, or any other limited term, could as well declare a law unconstitutional, as one appointed for life. It was possible for a judge to pronounce a law unconstitutional ten years after being passed. How idle it was, then, to say that the judges must be appointed for the long term of fifteen years, or for life, as they would then be independent enough to declare a law unconstitutional, if they thought so.

He would ask gentlemen, if they had ever heard of an instance in any State of the Union, of a judge appointed for three years only, being called upon to pronounce his opinion, in regard to the constitutionality of a law, when the Legislature had it in their power to remove the judge? Such a case was never heard of. All the fear and apprehension expressed by gentlemen, fell to the ground, so far as regarded the legislature who made the law. That independence which some gentlemen desired to see exercised by the judiciary, would, in his opinion, be altogether inconsistent. It would be an independence which he should be sorry to see exercised—an independence entirely in opposition to the will of the people. He did not wish to see it exercised here, in Mississippi, New Jersey, or any where else. To appoint the judges for fifteen years, was to argue that they must be altogether independent of the people, as well as the legislature, and that both might be wrong. He apprehended that if a judge were appointed at the age of sixty, for the term of fifteen years, it would be found more than long enough for the people. And, if he were appointed at forty years of age, the term would be too short. If this principle was, that so long as the judges behave well they shall retain office—which, however, was a wrong principle—there could be no reason why the term of fifteen years was fixed upon. He maintained, that according to the argument which had been urged, the term of fifteen years was proper for a man of fifty-five. It also proved that thirty years would be proper for a man of thirty-five.

Gentlemen who were in favor of the life tenure, seemed to imagine that those who were against it, did not like the present judges, and therefore desired to have them removed. Now, he (Mr. Earle) begged to say that he was not among the number. He had no private griefs to urge against them, and he would not remove a single judge to-morrow, if he could. He had, at home, a pamphlet which he wrote against the life tenure, before he became a member of the bar, and he had not changed his sentiments on the subject since that time. Shall we (he asked) adopt a pernicious principle to gratify a private pique? He trusted not. All that we desired was to abolish life offices, and to substitue for them a reasonable tenure. We asked to reduce the responsibility of the judges. He considered, that if a judge should take it into his head to give a decision, which was altogether contrary to the opinions of those who framed the Constitution, and would not construe that instrument according to the meaning and intention of those who made it, this was a case justifying the removal of a judge. He contended, that if a judge construed the Constitution according to monarchical principles, he ought to be removed. If he decided that "black" meant "white," or that "white" meant "black," the people had a right to remove him from office. Such cases, he would admit, were of rare occurrence, but nevertheless they did sometimes occur. A man might become indolent and inattentive to

the duties of his office, and, consequently it was proper that he should be removed. Short terms tended to make judges industrious and attentive. In his opinion, if a man were appointed for the term of fifteen years, he would not be stimulated to industry, and the more especially so, if an old man. He (Mr. E.) conceived, that we should reserve to ourselves the power of removing a judge from office, if he proved to be idle, or tyrannical, or disposed to act partially between suitors. There ought to be some mode of getting rid of him, supposing, he deserved to be removed after being in office, perhaps, but two or three years. Why, were we to be compelled to keep him in office twelve or fifteen years longer than we wished? Why were the people to suffer for thirteen years before they could obtain redress? He regarded this tenure of fifteen years as affording no redress to the people. It was worse than no redress, because it was calculated, as he could show, to prevent relief. We all knew the various pretexts which had been set up in behalf of the judges, and, in consequence of which, they had escaped removal heretofore. We could not but see that some more efficient provision was required to remedy existing evils, than at present existed. His opinion was that the proposed tenure of fifteen years would be found to be an obstacle to the removal of a judge, by impeachment, or address. Supposing him to have been in office nearly fifteen years, and the people to be dissatisfied with him, and they should apply to the legislature to remove him, did any gentleman here imagine that they would remove him? Certainly not. His friends would use their influence with the members of the legislature, and excite their sympathy on his account. If we removed a judge, he might die as Judge Drake did, and he might, as that judge did, get his powerful, wealthy, and influential friends to use all their arts with the legislature, to get him reappointed. There would then be no possibility of obtaining any redress. Of the two propositions, he (Mr. Earle) would say, that it would be incomparably better to appoint the judges for the tenure of good behaviour, and to provide an efficient mode of removal. Adopt such a mode as is practised in a majority of our sister states. Do away with the distinction between matters impeachable, and not impeachable. He considered the distinction as unnecessary and absurd, and which rendered it almost impossible to remove a judge. It would be advisable to give the legislature an absolute power of removal, by address, on a vote of two-thirds. Let us take the example of England, which gentlemen loved so well, and adopt the principle of the act which was read this morning by the gentleman from Union, (Mr. Merrill.) The judiciary there, are perfectly responsible. The judges could be removed every year, if thought necessary. Now, that was the independent judiciary, for which our forefathers formerly contended. There was some sense—some reason in a judiciary of that character; but ours had nothing to recommend it, as at present constituted. In fact, it was good for nothing at all, and simply for this reason: the law of impeachment had been laid down in this Convention, and also in the legislature, that if a judge does wrong—wilfully, knowingly, corruptly, it was a matter of impeachment. But, if he does wrong through weakness—through human infirmity—not intending to act improperly, he could not be impeached. A few years ago, when a judge was impeached before the Senate of the United States for an act of gross and flagrant tyranny and a violation of the law of the land, all the judges present voted in favor of the judge, be-

cause they regarded the judge so great a fool as not to understand his duty. Now, if a judge were so great a fool as not to know his duty—how was it possible to ascertain whether a man wilfully gave judgment in favor of his personal friends, or political associates, or whether what he said, was not said through mere error of judgment, or mental imbecility. It must be perfectly clear, he thought, that when a judge came before the legislature, the senators or members of the legislature, acted honestly. While some, however, might conceive, that they had come to an unjust conclusion—that they had acted through corruption, others might imagine that their decision was the result of human frailty. He declared that he was willing to leave the good behaviour tenure to posterity. He was desirous that the principles which he advocated should be carried out—he meant, in regard to the responsibility of the judiciary. He contended, that objections would be raised throughout the state, if a provision of this kind were to be incorporated in the Constitution. They would be made, principally, by those who desired the actual responsibility of the judges. The amendment would be regarded as the shadow without the substance—as not amounting to what was required. He would most certainly record his vote against it.

Mr. Dickey, of Beaver, remarked that when he offered the amendment, he did not expect the question would be taken upon it so soon. He, however, was glad of it, and could not help congratulating the committee on having this debate on the judiciary, cut short. No doubt, some gentlemen would be disappointed in not having an opportunity to deliver the long speeches which they might have prepared, but he trusted that their constituents would pardon them, in consideration of the discussion having been brought so speedily to a close. He rejoiced that the committee had refused to indulge the gentleman from the county of Philadelphia, (Mr. Earle) by delaying the action of this body on the subject before it, for two or three weeks. If some gentlemen had been rather inconsistent in their course on this question, they would have to apologise for it to their constituents, in the best manner they could. With regard to his own constituents, he could say that he knew them to be opposed to a short term. He should be perfectly satisfied to rest his vote on the principle of the amendment, as offered. He did not say that he should vote for it; but what he would now say was, that he could not vote for three superior and five president judges.

My constituents are opposed to a short tenure for the judiciary: But I may vote for a shorter term than has been proposed by some gentlemen. Believing that the committee are now prepared for the vote, I will not detain them by any further remarks.

Mr. Banks said, he was under the necessity of addressing the committee in consequence of the advance of the opinion by the gentleman from Indiana, for whose opinions he always felt a hight respect—that the present proposition would not answer the purpose contemplated by the friends of reform. If we grasp at too much, we may lose all; and we had better secure a recognition of the principle of limited tenures, than lose the opportunity now afforded to us, perhaps forever. Though not content with the proposition of the gentleman from Beaver, yet I am entirely willing to take it as far as it, agrees with my views. Every one knows that I am in favor of shortening the term of judicial office, and

that I have been unifomly and utterly opposed to the life tenure; my views on this subject appear in the resolutions and reports on your files. In one of them is asserted the doctrine that the term should be limited to five years. The difference between this proposition and my resolution is in the length of the term proposed. The gentleman from Beaver proposes a term of fifteen years, while my proposition was a term of five years. But I am willing, rather than to lose all—and rather than to forego the opportunity now afforded for establishing the principle of limited tenures, to take the term of fifteen years. Though I do not approve of the proposition, in all its length and breadth, yet I am willing to accede to it, so far as it does suit my views. The principle being once established, it may be safely left to the wisdom of the people, to extend it hereafter as far as they please. By the provision for future amendments, which we shall make, they will have this opportunity. Reserving to myself, therefore, the right to express my views, hereafter, in the form of an amendment to the new Constitution, I am willing, for the sake of compromise, to vote for the term offered by the gentleman from Beaver, (Mr. Dickey.) We will now see who, of the devoted and steadfast friends of a reduced and limited tenure, would go for the amendment. If they will go with us for this compromise, they will gain the principle for which all along we have struggled and contended. The question presented is a plain and practical one. Shall we take this or get nothing? Shall we say to gentlemen who are in favor of the unlimited and life tenure,—"we are better and wiser than you, and we will surrender nothing to your judgment and wishes, but hold to our own propositions, though we cannot carry them?" I am willing to take the best offer I can get, and, therefore, will vote for the amendment of the gentleman from Beaver.

Mr. Bell felt himself, he said, in an awkward position in regard to this question, especially after the remarks of the gentleman from Mifflin. The gentleman from Indiana has told us that, if we vote for the amendment of the gentleman from Beaver, we give up every thing; that if we accede to that term of fifteen years, we surrender all the principles for which we have contended. He (Mr. Bell) was really afraid that it was so, and, therefore, he had something to say by way of complaint, on account of the gentleman having put the proposition in, at this time. He wished to speak upon the subject, and, could he speak against the proposition, and vote for it? After the honest declaration from the gentleman from Philadelphia, (Mr. Earle) that he wished and intended to destroy the independence of the judiciary,—and he thanked him for so freely and candidly expressing his opinion upon the question—it could not be expected that the proposition would suit all parties. That gentleman (Mr. Earle) was opposed to any judicial system which would restrain the sovereignty of the people—and, in that phrase, the sovereignty of the people, there was great danger, especially in the county of Philadelphia. He had a few words to say upon the question, whether limited tenures would destroy the independence of the judiciary. The gentleman from Luzerne had sustained the doctrine that the change would not destroy the judicial independence, but plant it on a rock, and he said he would pledge himself to prove that, instead of destroying the independence of the judiciary, the adoption of the system of limited tenures would hold up a strong buttress for the support of its independence. It

was his (Mr. Bell's) wish, to take up this argument and follow it out, and he felt it to be his duty to do it, and to show where the doctrine maintained by the gentleman failed. He was sorry to be deprived of this opportunity, at present, by the shape in which the question had been presented by the amendment of the gentleman from Beaver. But the gentleman from the county of Philadelphia, who is called the father of the Convention, and for whom all due veneration was felt, had laid down the position, that the judiciary must be improved by substituting for it the sovereignty of the people; now, what was this popular sovereignty? Was it mere popular clamor? It was so in one sense; but, in another, it was democracy. That popular sovereignty which consists of popular opinion, regulated by reflection and instruction, was entitled to great deference. But I wish to know, said Mr. Bell, if the gentleman wishes to submit the decisions of the judges of Pennsylvania, which decisions operate upon the property, the prosperity and the liberty of all the citizens of the Commonwealth, to the sovereignty of the people for revision,—to be approved or reversed, according to popular whim and impulse, without any responsibility or any definite knowledge of the merits of the cases to be thus finally decided? I dare say, (said Mr. Bell) that I shall make myself very unpopular in the county of Philadelphia, if I suggest a doubt as to the feasibility of such a judicial system.

He was now placed in a singular position by this amendment. If he voted for it, he might be ranked among those who are in favor of destroying the independence of the judiciary, or of subjecting it to the sovereignty of the people. We had before us the example of the English judiciary, and the learned judge from Philadelphia, had already exhibited to us there, the example of an independent judiciary established by the tenure of good behaviour, before civil liberty was established. He (Mr. Bell) had intended to travel into that argument, and to deduce from it some considerations in favor of the tenure of good behaviour. His attention had also been directed to the Constitution of the United States, which was penned by wise, prudent, and honest men, and to the fact that they put in that Constitution the tenure of good behaviour. How was this argument met? Doctor Franklin, whose views of government in 1776, were somewhat Eutopian, had introduced the short term system, and it was agreed to be a decided failure. But, after returning, with all the experience and the weight of character given him by his observation and intercourse in Europe, he become a member of the Convention which formed the federal Constitution, and agreed to the tenure of good behaviour. Have we heard a whisper against the tenure established by the Constitution of the United States? No sir. There sit the federal judges, clothed with life tenures, raised high above the people, and amenable only to impeachment. What is the answer to all this? Why, it is said, that there is a difference between the federal and the state government, in regard to the duties, power, and responsibility of the judiciary. Where is this difference? Gentlemen say that the federal judiciary has to pass judgment upon high political topics—on questions connected with the operations of the departments of the federal and state governments, and therefore, ought not to be subjected to any responsibility, except, through an impeachment. But, am I to be told that the judiciary of Pennsylvania, has no power to pass upon questions connected with political subjects? Have they not jurisdiction in all possible cases,

where there is a complaint that the legislative branch of the state government has transcended its power? Can this be denied? Have not the judiciary of Pennsylvania repeatedly passed over questions of Constitutional law? Where then is the difference between the federal and the state judiciary, which should render necessary and proper this difference of tenure? Why should independence be necessary for one, and not for the other? As both stand on the same ground, why should not independence of action and decision be as necessary to the judiciary of Pennsylvania as to the federal judiciary?

The Convention then rose, reported progress: and,

The Convention adjourned.

WEDNESDAY, November 1, 1837.

Mr. Fleming, of Lycoming, submitted the following resolution, which was laid on the table for future consideration, viz:

"*Resolved,* That this Convention will adjourn on the 30th instant, to meet in the city of Philadelphia, on Monday, the 4th of December next."

Mr. Cochran, of Lancaster, submitted the following resolution, which was laid on the table for future consideration, viz:

"*Resolved,* That a committee be appointed for the purpose of ascertaining, and reporting to this Convention, previous to the —— instant, the most eligible place for the session of this Convention, during the session of the State Legislature."

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'Sherry in the chair, on the report of the committee to whom was referred the fifth article of the Constitution.

The question being on the amendment of Mr. Woodward, as amended by the substitution of the proposition of Mr. Dickey, making it to read as follows:

"Sect. 2. The judges of the supreme court, of the several courts of common pleas, and of such other courts of record as are, or shall be, established by law, shall be nominated by the Governor, and by and with the consent of the senate, appointed and commissioned by him. The judges of the supreme court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well. The president judges of the several courts of common pleas, and of such other courts of record as are, or shall be, established by law,—and all other judges required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves well. The associate judges

of the court of common pleas shall hold their offices for the term of five years, if they shall so long behave themselves well. But for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor may remove any of them, on the address of two-thirds of each branch of the Legislature. The judges of the supreme court, and the presidents of the several courts of common pleas, shall, at stated times, receive for their services an adequate compensation, to be fixed by law,—which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit under this Commonwealth."

Mr. Brown, of the county of Philadelphia, said, as the gentleman from Chester, (Mr. Bell) did not seem disposed to avail himself of his privilege of the floor, he would trouble the committee with a few words. Although the question had somewhat changed its character, since yesterday, still the great question of principle was not compromitted. The question of a term of years, was still the question open for discussion. Supposing that those who have asserted that the life tenure, or tenure of good behavior, which is, in effect, the same, is necessary to the independence of the judiciary; still adhere to this opinion, he thought other reasons might be given, besides those already so ably answered by the gentleman from Luzerne, (Mr. Woodward) to show why that was not necessary,—and that, the people of Pennsylvania had never been satisfied with this feature of their Constitution, and that they had its reform especially in view, when they called this Convention. It was to this last point in the debate, that he would more particularly call their attention, as it had been asserted by the gentleman from Philadelphia, (Judge Hopkinson) and others, that if it could be shown that the people of Pennsylvania required this reform, they would offer no further opposition.

In the first place, then, said Mr. B. he would show that this subject of the life tenure had not now been agitated for the first time, but that it had excited the attention of the people, and had loudly been complained of, from shortly after the adoption of this Constitution, until the calling of this Convention. The voice of the people had spoken in reference to it —not from town meetings, only, which it was the practice of some gentlemen here to speak lightly of, but, however, they might be disposed to disregard these meetings, it was probable that, in assemblages of this character, where citizens meet face to face, and one man's countenance sharpened that of another, public sentiment would most correctly develope itself. He was not, however, about to show that town meetings had had any influence in bringing this question into the position in which it now stood. He would waive that point, and bring other evidence—petitions from the people, and solemn decisions of the legislature,—the proceedings of which body designated the complaint, and the remedy that should be applied. He had before him a petition, which was presented to the legislature as early as the year 1805. The learned gentleman from Philadelphia, (Judge Hopkinson) said, that he had never heard of any ojections to this feature in the Constitution, until he came here. He (Mr. B.) could not but express his surprise, that this petition should have escaped the vigilant research of that gentleman. The petitioners, in the petition to which he referred, held this language:

[Mr. Brown here read from a petition, praying such reform of the judiciary system, as would render it less complex, prolix and expensive; and enable the citizens to provide justice without sale, denial or delays, and complaining particularly of the existing tenure of the judicial office.]

This was the language of the people of Pennsylvania, or at least of a part of them, in 1805, as is shown in the journal of the legislative proceedings of that year. This then, is no new cry, growing out of the new fangled notions of government, which are supposed to prevail at the present day. The feeling had grown up in Pennsylvania, with the growth of those republican principles, which had produced this Convention ; and it was not to be now cried down as a thing of radical growth. It did not spring from any sudden excitement of popular opinion, carrying all before it ; but had grown up out of the effects of this system, since the establishment of this Commonwealth. He would now show the committee what had been the course of the proceedings and petitions on this subject since 1805. He would read from the journal of theeg legislature, an extract from a preamble and resolutions, offered by Messrs. Andrews and Dingman, February 14, 1812.

In the preamble it is said : "The removal of officers, who are commissioned during good behaviour, (or without limitation of time,) by an application to the legislature, has always been attended with great difficulty, delay and expense ; and, in many instances, of abuse of power, the citizens have borne injury rather than seek redress under difficulties that appeared unsurmountable, and when, if the tenure of the office had been for a short period, the exclusion of the officer would, without expense to the state or the people, have been natural and easy."

And the fourth resolution is in these words :

"4th. The judges of the supreme court and the president and associate judges of the courts of common pleas, shall be commissioned for, and remain in office seven years, if they shall so long behave themselves well."

These views seemed, nearly in the same words, to have been laid down, in every expression of public opinion, from that time to the present. The subject was passed by at the time. He held in his hand a petition presented in 1810, similar to others from other parts of the Commonwealth. The petitioners here say, "that judges of the supreme court and courts of common pleas, and justices of the peace, should hold their offices during life, or what is termed good behaviour, is a principle hostile to and irreconcilable with, every idea of civil liberty."

That, therefore, was the opinion of a considerable portion of the people in 1810. What was on record in the report of the legislative proceedings of that day. It would be found that Mr. Darlington, of Chester, presented several petitions calling for reforms. The petitioners used this language.

[Mr. B. here read from a petition, containing similar opinions with those above quoted.]

Then came the proceedings of the legislature in 1810, and 1811. He did not find one word here against the proposed amendments, but the question was simply, whether that legislature was justified in calling a Convention. In 1821 and 1822, the same subject was agitated. There

were petitions, at that time on the subject, from which he would read a passage.

[Mr. B. again referred to some petitions in his hand, from which he read extracts suitable to his argument.]

A motion was made by Mr. Tarr and Mr. Ritner, to refer the petitions. Among the yeas on the question, the present Chief Magistrate recorded his name. Thus, it appeared, the subject was still continued before the legislature. In the next place, he would come to the years 1823 and 1824. He wished to shew that the subject had never been lost sight of by the people of Pennsylvania. The journals of the house contained the following record:

1823, December 18.—A motion was made by Mr. Audenried and Mr. Roberts, and read as follows: Whereas, the Constitution of this Commonwealth, has upon trial of more than thirty years been found defective in some of its provisions, particularly too extensive and uncontrolled a power of appointment, and too undefined and unlimited a discretion as to the number of justices of the peace that he may commission, as well as in giving to these and other judicial officers, *too permanent a tenure of office*, &c. * * * Therefore,

Be it Resolved, That a committee be appointed to inquire into the expediency of bringing in a bill, with such provisions as will enable the people to vote at the next general election, for or against a Convention to revise and amend the Constitution of this Commonwealth, thereby to ascertain whether the people, the source of all power, are favorably disposed to such a call.

This resolution was taken up February 2d, 1824, and adopted. Yeas 67, nays 18.

Among the yeas were to be found the names of the present Chief Magistrate, and other conspicuous gentlemen of this day. It appears that, afterwards, this committee reported that he Constitution of 1790 was superior to that of 1776. They say:—"It will be as little denied that strong defects still exist in our frame of government. This began very seriously to be felt on a trial of ten years. A further trial of twenty years has constantly been adding to the proofs of its imperfections."

They then go on at large to shew how it is defective. The proceedings were continued and a bill was reported. He could not discover that this bill was called up again. The next notice to which he would call the attention of the committee was in 1824 and 1825. The subject, it would be remarked, was never lost sight of. We find there on the journals the following:—"March 22d, 1825, the house resumed the third reading of the bill, No. 117, entitled "an act for ascertaining the opinion of the people of this Commonwealth, relative to the call of a Convention." And on the question, shall the same pass? The yeas were 48, nays 40.

Among those who voted for this measure, was to be found our present Chief Magistrate, who seemed always to have had reform at his heart. All the gentlemen from Washington county were also in the same position throughout, never losing sight of this great reform: and now we had some of these gentlemen on this floor—Messrs. Kerr, Ritter, Sterigere,

Mann, who all voted in favor of this Convention. He could not find a man opposing a Convention, who had a seat here. What were the reasons given by those who refused to call a Convention? We had no record of debates before us from which we could obtain men's opinions, but we had a protest, from which he would read an extract. The protesters say:

"We, the undersigned, members of the legislature having voted against the passage of the bill, entitled "*an act for ascertaining the opinion of the* people of this Commonwealth relative to the call of a Convention," avail ourselves of the right of putting our reasons for so doing on the journals. We view this bill as one of momentous importance. We hold these principles to be correct and sacred, "that all power is inherent in the people, and all free governments are instituted for their peace and happiness. For the advancement of these ends, they have at all times, an *inalienable and indefeasible right to alter, reform or abolish their government* in such manner as they may think proper." The people alone have the power to alter, reform or abolish their government. We conceive the measure for a call of a Convention for this purpose, should originate with the people themselves, and not with their representatives, whose power are limited and defined. There have been no petitions, nor any expression of sentiment by the people, in favor of the call of a Convention. In acting on this question, we hold ourselves bound to represent the will of our constituents, but that is unknown: and we therefore cannot assume to ourselves powers which we believe are not delegated to us."

Not, in a single instance, was it said, that the Constitution was not defective—that it was "a matchless instrument." Not in a single instance, did these protesters shield themselves behind the perfectibility of this instrument. The call was made, and we had been told that it had not been responded to by the people of Pennsylvania. What was the reason they did not then respond? It was this. The people of Pennsylvania, living under a generally good Constitution, with some defects, had petitioned for the call of a Convention for particular objects—to make certain amendments, and looking to nothing beyond those objects. In the call of the Convention of 1790, there had been no provision introduced to require a vote of the people on the Constitution which might be formed. That Convention had taken such course as they thought most suitable; and the people had seen that Convention making amendments which they were never required to make; not guided by any opinions of the people, but taking upon themselves to say what government was best, and then adopting it without consulting their constituents. They thus transcended the high powers conferred upon them. Therefore, when the question was afterwards submitted to the people in 1825, they refused to call a Convention with unlimited powers. With this history before them, they did vote down that Convention, because there was no clause in the act, requiring that the amendments should be submitted to the people. Here was the ground work of their refusal to respond to the call of the legislature. This was the cause of the cry of alarm from one end of the country to the other, against the changes which would be made by this irresponsible body. The people refused to give the Convention these final powers, and this was the reason it went down. Did we see

the people of Pennsylvania giving up their object after this? No; they were aware of the reason why they could not with propriety authorize the call of a Convention with the unlimited powers provided in the act of 1825, and they saw still more clearly the defects in the Constitution which required a remedy. They went on, as Pennsylvanians always will go on, until they had consummated their desire. Gentlemen would find that in 1832 and 1833, the subject was again brought up. Here we had been freqnently asked—where is the evidence of the objects for which the people called this Convention? The gentleman from Philadelphia, (Mr. Hopkinson) had said, there was no evidence on that point. He (Mr. B.) had taken the pains to examine the petitions; and he had selected one from each county, and he would now call the attention of the commtttee to the written evidences of the object which the people had in view in calling this Convention. He had found in these later petitions that the same objects of reform were contemplated, which had been brought forward in 1805, 1810, 1812, 1822, 1823, 1824, 1832 and 1833. He found on the subject of this change of the judicial tenure, that the evidence of the public opinion came from every part of the country. This evidence was in his hand. The people of Pennsylvania had complained of this life tenure up to the present day: and their whole course and language shewed that the judiciary system, as it now stood, was not such as they approved, not such as they wished to continue. What did they say? They held this language:

"It is believed that the Constitution of Pennsylvania might be improved by being so amended as to diminish the patronage of the Governor, *abolish all offices for life*, secure a more equal enjoyment of the right of suffrage, and have magistrates and other officers elected directly by the people."

Such then was the object, and it was breathed in every petition. He now called on gentlemen to redeem their pledge. The people of Pennsylvania would go with them and to the end. He now put it to the gentlemen from Philadelphia to abandon this point. That gentleman had said he would do so, if any evidence of public opinion could be shewn. That gentleman had asked if there was any one voice approving of this change of judicial tenure—he had stated that there was nothing on record—no evidence of the fact, and that it was of no use to assume it. There had been remonstrances and petitions, year after year, produced in reply, and others might be found in 1833, and what was the substance of these. He (Mr. B.) had read one, and the gentleman could look at the others. It was astonishing with what unanimity they were characterized. We had been told that they all came from one mint. So much the better. At the town of Boston, when the revolution commenced, a cry was raised against the oppression of the mother country. The feeling spread, and no matter whence it came, so it was responded to. The unanimity of the response, in this case, shewed the purity of the motive in which it originated. The remonstrance in his hand ran thus:—" The subscribers, citizens of Bucks county, understanding that petitions for a Convention to alter the Constitution of the State have been presented to your bodies, beg leave respectfully to remonstrate against any such measure. The citizens of this Commonwealth have very recently decided against it, [in this, said Mr. B. they beg the question,] and the present disturbed

state of our country and our own moneyed difficulties, forbid the agitation of this question at present."

The times, as it seemed, were not propitious. The money concerns of the country were deranged, and it was thought unwise to agitate the people. But he held another document in his hand, a little different in its character. The language of this was—"Our present Constitutions have protected our rights and given us abundance and happiness. We wish these blessings and that happiness to descend upon our children, and not to put to hazard all we have acquired and all we enjoy, by alterations in our Constitutions. The men of the revolution have died; we have now no Washington to preside over our Conventions, and as we know not on whom the mantle of the illustrious dead may have fallen, we greatly desire to cling to what their wisdom has framed, and not put to hazard all we have acquired, by shaking our governments to their very foundations."

Such were the arguments in this memorial. The signers did not say there should be no amendments, or that reform was not right and proper. They did not say so; they have not said so. He might be mistaken as to their views, but there was nothing like this in their language. He had thus shewn that the subject of reform was not one of yesterday and to-day. It had grown out of a deep settled conviction of the people that something was wrong, and no people could have pursued reform so unceasingly, if nothing had been wrong. Some gentlemen had said that his colleague, (Mr. Earle) was the father of this Convention. Where was he in 1805? He (Mr. B.) did not know whether his colleague was born at that time. Did the gentleman from Washington in 1825, vote for reform to please his colleague, when he was not known in the state? He would rather say that his colleague was a child of reform than its father.

Having thus proved, as he thought he had, to the satisfaction of every member of this Convention, that the complaints against the judiciary system were not, as has been said by the gentleman from the city, heard for the first time in this hall, but have been made from all parts of the state, continually since as hort period after the adoption of the Constitution of 1790:—having also proved, as he thought, to the satisfaction of even that gentleman himself, that the people have, at all times, and particularly in calling this Convention, had this object in view:—he would now call on that gentleman, (Mr. Hopkinson) and his colleagues, to redeem their promise, "that if it could be shewn that the people required this amendment, they would vote for it." He had proved it, he said, not from your meetings, which seem not to be deemed good authority here, but which he regarded as the best exponent of the public will, but by petitions signed by the people in all parts of the state, calmly by their fire sides, clearly setting forth these complaints and the remedy, and laid before the legislature. He had proved it from the legislative records; and if these endorsers of public opinion would not satisfy, no human testimony would. Thus, at no time since the adoption of the Constitution, had the life tenure of the judiciary been acquiesced in, or given general satisfaction. But are we bound to obey the public will, thus long and audibly expressed? He was not about to go into the question of instruction. He knew the gentleman from Philadelphia was opposed to

instruction. He had read the opinion of that learned gentleman at length, and believed him to be entirely consistent. The party to which that gentleman belongs had always held the doctrine, that instructions are not binding. Perhaps in some cases they were not. But here, for thirty two years, the people had been seeking means to amend their Constitution. They had called this Convention for that purpose, as had been clearly shewn. Many gentlemen, who opposed these amendments, had also opposed the call of a Convention. But some of these were now here. They had felt that they were under an obligation to the people to come here, and they should now be ready to fulfil the wishes of the people. There could be no question on that point. The Convention had been called to consider what amendments may be proper, and to submit them to the people. We had been called together with these lights before us, and it became our duty, according to the best lights we had, to incorporate in the Constitution these changes which would be most desirable to the people. Suppose now that we had assembled, we should say to the people—" Your Constitution is good. You have been laboring under a mistake. You suffer nothing from its operation : and we give you back the Constitution as it is." Was it for this the people convened us? Was it that we should preclude them for ever from giving their opinions? They had requested a reform, and we send back to them their old Constitution, and thus cause a new excitement throughout the country.

Cannot gentlemen give to the people of Pennsylvania all the light and experience which they have on this subject? Can they not go before the people, and tell them that the amendments proposed will be injurious to them? Will not the people then have an opportunity to review their opinions, and to come to the conclusion that you are right, and they wrong; granting that your lights on the subject are superior to theirs, and therefore, rejecting the amendments? Or, should they still, after mature reflection, aided by your arguments, adhere to their own opinions, then they will be able, as they ought to be, to adopt such amendments as they wish. In either way, we discharge our duty, and satisfy the people. How can we say that we will withhold from the people all chance to pass on these subjects? Is it not our duty first to give them what they want, what they have asked for; and then gentlemen can go before them with their own views, and arguments on the question. Do gentlemen fear the people of Pennsylvania? Do they apprehend that they are so firmly fixed in their opinions on this question, that they cannot be moved? If so, then it is a farther reason why the people should be allowed to decide for themselves, for they are the only tribunal who ought to decide upon it. A powerful appeal hasb een made to us, and examples have been pointed out, of great men yielding to popular opinion, and being sacrified in consequence of it. All this may be true. But let us look abroad in our own country, and see how many there are who have sunk in consequence of disregarding public opinion, and the expressed will of the people. Wheoever would undertake to disobey the instructions of the people of Pennsylvania, had better look abroad, and see whether any public man has ever been able to stand against the popular will. No man has ever been strong enough, in this Commonwealth. This is a dangerous attempt, sir, try it who may, to set up the will of individuals, or of public bodies, against that of the people at large. It is

dangerous, any where, and especially so where the people exert so much power.

Having endeavored to show what are the wishes of the people, and what the purposes for which we are called together, I now proceed to notice the reasons why we should obey the voice of the people.

I believe, sir, in the independence of the judiciary, and will do nothing to impair it, and I regret that my colleague, (Mr. Earle,) in his remarks, yesterday, let fall a hasty expression, intimating that he was opposed to their independence. He did not, however, use the expression in the sense in which it has been taken, and repeated, by the gentleman from Chester, (Mr. Bell.) He. (Mr. Earle) said he was for preserving the *integrity* of the judiciary, which is but another form of expressing the same thing as their independence. That word, integrity, might answer our purpose; but, sir, I am willing to say that I am for an independent judiciary. It has been said that the judiciary of England is independent, because it is not under the control of the crown:—but the legislature, if I am not greatly mistaken, may control it, to a great extent. The judges of this state, even under the present Constitution, are not independent of the people; for, they may be removed, on the address of both branches of the legislature. They are therefore made dependent on the people themselves. If it was considered necessary, in order to their independence, to cut them loose from all human authority or control, why make them amenable to two thirds of the legislature? In some of the states whose example has been cited here, in support of the life tenure, the judges may be removed by a bare majority of the legislature. Where, then, will gentlemen find the principle of an independent judiciary carried out to the extent which they demand, and which their argument calls for? I will go as far as any one to make the judges independent of all the other branches of the government, but I would secure their responsibility to the people. What, sir, does the argument of the gentleman lead to? What kind of independence is it that they wish? They will not say that they shall not be amenable to some power,—at least to some other branch of the government. Here I will read the language of Burke, as quoted in Strory's commentaries, on this subject.

"Whatever, says he, is supreme in a state ought to have as much as possible, its judicial authority so constituted, as not only not to depend upon it, but in some sort to balance it. It ought to give security to its justice against its power. It ought to make its judicature, as it were, something exterior to the state."

Now, are gentlemen prepared to carry out this principle of independence? Will they assert that the judiciary should be so far independent as to control and check the people? This is not the independence even of our present judiciary. It is not a power, "exterior to the state;" it is dependent on the will of the state. This principle of independence may, however, be very good, under a king; but it would not be applicable here. It is admitted by all that, here, the judges are only to be independent to a certain extent, and complete independence is not asked for. What is laid down, in our own state Constitution, on this subject, is of more authority, than all the writings of antiquity, which have been referred to. The Constitution of Maine says, "Every person

holding any office may be removed by the Governor, with the advice of the council, on the address of both branches of the legislature."

So, the Constitution of old Massachusetts, has nothing about an authority, "exterior to the state." It says:

"All power residing originally in the people and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive or *judicial*, are their substitutes and agents, and are at all times accountable to them."

Their "substitutes and agents," have no power to control them. This is the same principle which we have introdnced into our Constitution, though we have not carried it out in relation to the judiciary. The same doctrine will be found in the Constitutions of Vermont and New Hampshire.

But, sir, the gentleman from Philadelphia, (Mr. Hopkinson) says that, in this country, the judges have no political power. When the judges in England were dependent wholly upon the king, the gentleman's argument goes to show that they were still honest and independent judges, in cases where the crown was not interested. He says that even Jeffries, though a mere tool of the crown, was a just judge, as between man and man. The cases, then, are not analogous; and, even if the judges here had no political power, it would be no argument in favor of making them irresponsible, and, according to his own showing, judges may be wholly dependent on the chief power of the state, and yet do justice to individuals. The argument is universal in that case.

I am rather at a loss, however, to imagine how the learned gentleman can say that our judges have no political power. We cannot be deaf to the complaints so often made of their interference in the elections, and the influence they exert over their result, in opposition to the voice of the great mass of the people of Pennsylvania.

It is laid down in the Federalist, by Alexander Hamilton, that the good behaviour tenure of the judiciary, in a monarchy, "is an excellent barrier to the despotism of the prince, and, in a republic, it is a no less excellent barrier to the encroachments and oppressions of the representative body,"* I don't know how far the representatives may encroach upon powers not belonging to them, but it is folly to say that their encroachments can be resisted by the judiciary, when the legislature can, at any time, remove the judges. How easy it would be, in a contest between the two departments, to do that. The argument for the independence of the judiciary, in this case, is then given up, and its very object is given up. Such a degree of independence might be very dangerous, under some circumstances. It is admitted that they may exercise their own will, and substitute it for the will of the legislative body.

Gentlemen have argued that it is necessary to make the judiciary stable and independent, in order to guard against the momentary ebulitions of the popular will. But is there any change contemplated by which the popular will may be enabled suddenly to sweep away from before it the departments of the judiciary? The argument is that the amendment proposed will afford the people an opportunity to infuse into the judiciary

* 3 Stories Commentaries on the Constitution, p. 458.

their own views and impulses; and that, with so great an infusion of the popular feeling in every branch of the government, it will be impossible to carry it on. But, sir, were it possible to prevent the people from infusing into the government their own judgment, it would be, in effect, revolutionized. It would no longer be a popular government, nor a free government. It is the salvation of our government, that the people can peaceably carry into all its departments their own feelings and views; and this is all we ask. If we asked for annual elections, then there would be some ground for the declaration that we are about to let loose the popular will, to control the judiciary. But, even if we were about to ask that the judges should be elected annually, the argument would not hold good. The argument drawn by the gentleman from Union, (Mr. Merrill) from the unjust decisions of the decemvirs, and of the judges in Greece, does not apply. There is no analogy between our situation and that of Rome and Greece. Paris, it has been said, is France, because the power of France was concentrated therein. So Rome was the whole Roman empire. But here it is not so, in our extensive and thinly populated country. Suppose an excitement got up at Pittsburg, against a judge there, on account of an unpopular decision. It could not proceed much farther, without having ample time to cool down. How long would it not be before it would reach the other portions of the people, and with what calmness and deliberation would it then be considered No sudden, and wide spread, and overpowering excitement can arise here. Suppose an unjust decision be made in Philadelphia, and that there should be a great excitement on account of it. Before it would reach the mountain tops, it must pass this valley, where it would be subjected to the deliberate and cool consideration of a people who are never excited, but in a good cause. But if it would pass here, it must still roll from valley to valley, of considerate freemen, before it overspreads the state. There would, therefore, be little danger from this source.

But, sir, we ask no such judiciary as is here held up to excite our apprehensions. We ask one which it will take years to change. Who would say that the judiciary must be a power "exterior to the state," and control it? You cannot control public opinion, if you would. Those who would seek to change or to check popular opinion, will only give it strength; *we, here*, are an evidence that the people will cause their will to be obeyed.

In Great Britain, the king appoints the judges, and the king lasts many years; under our proprietary government, they were appointed by the council, which body lasted seven years. They appointed the judges annually, and then they were really dependent. The power that appointed these judges, in both these cases, outlasted them. Do we ask such a judiciary as that? The judiciary we ask, outlives the Governor and the senate who appoint it, and it is to be passed upon, at the expiration of its term, by a new set of men. We ask not a judiciary that may be swept away by the first breath of popular excitement. Has any one shown us that our judiciary is more independent, and more capable and industrious, on account of its good behaviour tenure? Many complaints had been made against it. One of the memorials, presented in 1805, gave as a reason for the change of the tenure, that justice could not then be obtained from the courts.

[Here Mr. B. read an extract from a memorial, presented in 1805, in corroboration of his views.]

Thus they assert that justice could not be obtained from the courts, "without sale, denial, or delay." I know, sir,—though I am no disappointed suitor, and have no personal cause of complaint,—I know, sir, that many and grievous complaints have been made of the tardiness and negligence of the courts. Have they granted justice without delay? The complaint is not of their want of integrity, nor of incapacity, but of their failure to exert their faculties in the discharge of their duty. The people complain that they cannot get their causes decided. Is it no evil that they have to dance attendance on the courts, year after year? In Pittsburg, there were said to be, at one time, eight hundred cases, untried, on the docket of the supreme court. Such an accumulation as this must have arisen from a want of motive to action, on the part of the court.

Mr. Denny here begged to state that, at present, there were before the supreme court, at Pittsburg, only five cases, undecided.

Mr. Ingersoll. That is no contradiction.

Mr. Brown resumed. I spoke of a certain period of time heretofore. The cases may have been brought up, and the docket cleared, in consequence of the infusion of new judges into the court. Seeing the situation in which the docket stood, they may have cleared it off by industry, caused, perhaps, by the anticipation of this Convention. I do know, sir, though this is a delicate matter to speak of—that, at one time, in the court of common pleas, in Philadelphia, it was impossible, after getting a case in it, ever to get it out again. But the industry of the present judge had cleared away the immense mass of business before that court. The complaint is general, that your courts delay their business unnecessarily, and no one will go before them if he can avoid it. Justice, without delay, cannot be obtained from them. The records of the legislature, as you know, Mr. Chairman, are filled with these complaints against the judiciary; scarcely a session passes, without complaints against some of the judges. In one session, I recollect, three judges were complained of. I will not refer particularly to those cases. But the grounds of complaint were, bad habits, and change of character, in consequence, perhaps, of the visitation of God, and perhaps of their own bad habits. They were not such men as Pennsylvania should have for judges. In some cases it happened that a judge was so deaf that he could not hear the testimony; and, as is often the case with deaf persons, pretending to hear too well, heard what was not said. Hence it has happened, that, out of seven cases taken up by appeal from one court, seven were reversed. In the western district, we have seen a judge,—perhaps he may be an able one,—throw his whole court into confusion, and interrupt all the business, by a quarrel between himself and members of the bar. In another case,—and there is a gentleman here present who is my authority for it,—a judge, after hearing the views of one of the council, told him that he liked them very well, and requested a minute of them.

The lawyer furnished him with the argument accordingly, but accompanied it with the views taken by the counsel on the other side, supposing that they would assist the judge in his charge to the jury. What

was his mortification, when the judge charged the jury after the views of his opponent, and in direct hostility to his own,—having mistaken one argument for the other. In another case, which he would mention, a judge, after holding court eight days, tried two cases; the sums involved in both of which was ninety-eight dollars. That was getting along with business without delay.

I, sir, as I have already said, am no "disappointed suitor." I have nothing to hope, and nothing to fear, from the courts. But who can look at the courts of Pennsylvania, and see judges, superannuated, or incapable, or negligent, and not say that it is wrong, and ought not to be so? It is necessary that the people should have confidence in all their agents, and confidence cannot be withdrawn from any part of the government, without weakening the confidence reposed in free and popular governments, and taking from it the only power which maintains it. In consequence of the complaints thus made, some judges had been dismissed, but most of them had been continued, though the people had ceased to confide in their ability or integrity. This had been the history of the Pennsylvania judiciary for years past.

But look at those of our sister states, where this good behaviour tenure had not prevailed, and see what has been the case there. I begin with New Jersey, because I was long a resident in that state, and I believe the gentleman from Philadelphia is a native of it.

[Mr. Hopkinson shook his head.]

At all events, he resided there many years, and is well acquainted with the history and character of its judiciary, as other gentlemen around me also are. Their judges, elected for terms of five and seven years, are dependent—for a mere majority of the Legislature may elect, and, at any time, remove them. The Constitution of New Jersey is two years older than the Declaration of Independdnce; and I call upon gentlemen, who know the facts, to say whether the records of the legislature can show one single complaint against their judiciary, but one, and that was the unfortunate one which had been referred to by the gentleman, as producing an excitement, because the court decided in opposition to the party which was the strongest in the state. The people of New Jersey had never saw fit to reform their judiciary; nor to complain of its institution. The people have adopted some amendments to their Constitution, since it was framed, but no proposition was ever made to amend the judiciary system. The tenure is considered as settled, and the people are satisfied. It has been argued that good judges cannot be obtained, without the good behaviour tenure; but the gentleman was obliged to admit that those of New Jersey are as good as any to be found in in other states. I take it upon myself to say, that there never was a time when the best talents of the New Jersey bar were not on the bench. Witness the Kirkpatricks, Southards, Ewings, and others.

Let us step across our boundary to Ohio, the oldest daughter of Pennsylvania, and inquire what has been her experience. In 1802, Pennsylvania began to settle Ohio. The New Englanders also crowded into it; but the greater number of its early settlers were Pennsylvanians. Did they go there and establish this good behaviour tenure? No. They adopted a very different course; and show me any parallel,

if you can, in Ohio, to the complaints we have against our judges. Show me any calls for an alteration of their Constitution to get rid of their judiciary system. They are content with their judiciary.

Indiana, another and younger daughter of Pennsylvania, took pattern, in making her Constitution, not from her mother, but from her elder sister, Ohio. Have the people of Indiana complained of their judiciary, and tried to get rid of it? No. Why do not gentlemen meet our argument, by showing that there are complaints against the limited tenures, where they have been adopted?

We are told that Pennsylvania has prospered under the present judiciary system. But, sir, she has prospered not by it, but in spite of it. And have not Ohio and Indiana prospered?

Did your judiciary establish your canals and your rail roads? No sir. They owe their existence to the people themselves, through the agency of the popular branch of your government. Pennsylvania prospers, in spite of your judiciary, and, for a series of years, she would prosper, in spite of any government. Look at your young, prosperous and flourishing states of the west, peopled to a considerable extent with those who have been citizens of Pennsylvania, and do they copy the Constitution of Pennsylvania, in relation to this tenure of good behaviour. Look at Ohio, look at Indiana, and look at Michigan, the youngest of your western states, with a high Pennsylvania name at the head of the Convention, which formed her Constitution, who has since been elected to the Senate of the United States, did she copy this feature of our Constitution? No, sir. She adopted another tenure, and formed a Constitution which stands an enduring monument of the wisdom of the people of that young and flourishing state. He was not disposed to go back to pass in review before this Convention, the authority of British precedent, but he should endeavor to trace Pennsylvania feeling and Pennsylvania experience, on this great question, and show that it is, and always has been, against this life tenure, as it has been very properly called. He had examined the legislative proceedings from 1776, to 1790, to see if any light could be thrown on this subject, from that quarter, because we had been told that the Constitution of 1776 was a failure. What part of it was a failure? Was the judiciary department of that Constitution a failure? That was the question, and he here asserted that that department of the Constitution was not a failure. He called upon gentlemen who had made this assertion, to put their hand upon the legislative document, or any other part of the history of those times, to show that the judiciary system of 1776, was a failure. The complaint was, then, against a single representative body, and a divided executive; and he asked of gentlemen to show him the evidence of any complaint being made against the judiciary of that day. He had never seen any complaints on this subject. Let gentlemen show us that we had corrupt or incompetent judges then. Let them bring to our view the cases where the evils they dread so much have been exhibited. He called for the evidence—mere declamation will not do—give us the evidence. But, sir, why was that Constitution changed in this particular:—and he asked the attention of the Convention to this subject for a moment! Sir, we have had the Constitution of the United States held up to us as an example to pattern after. He was aware that the Constitution of 1790, was modeled after it, and we have been told

that the period, at which the Constitution of 1776 was adopted, was unfavorable to the formation of a fundamental law, and that the period, at which that of 1790 was formed, was favorable. Now he was too young to recollect that period, but he knew, from the history of the country, the history of the men who existed at that time, and the history of the trials they had to go through, that the former period was better adapted to that purpose than the latter. What was the history of the latter period—the period of 1790. Was there not a power then at work, beginning with Alexander Hamilton, to give to the Constitution of the United States, such a character as was not intended by its original framers. For the truth of these assertions, he referred gentlemen to the history of the country at that time. Did we not see that the greatest efforts were made, from the formation of the Constitution of the United States, up to the time that the elder Adams was removed from power, to shape the government of this country, not in accordance with the democratic principles of the revolution, but to make it conform as near as possible to that of Great Britain. Thus early was there a power raised up in this government, against the principles of the democracy of the revolution, and against the principles of our free government; and it was checked by the loud and deep voice of the people of the United States, by the election of Mr. Jefferson, to the Presidential chair. And, sir, that same insidious power which then attempted to creep in and give our institution this strange coloring, and raise up a supreme power, high above the people, is the very same power which crept into the Convention which formed the Constitution of 1790, and fixed this system upon us. Was he wrong in this? He thought not, and, as an evidence of it, he would read an extract from a dissenting report of a committee of the council of censors, to show that the Constitution of 1776, had worked well. These members of the minority of this committee, declared themselves apposed to altering the Constitution of 1776: "Because that Constitution, with all the pretended faults and imperfections, which have been so industriously searched out, and ascribed to it, by men who wanted an excuse for real disaffection or factious views, has stood the test of the most arduous trial, at a time when vigor and energy were indispensably necessary, in the execution of measures essential to our safety, among a people, of whose purity in some parts of the state, we cannot boast." Among the signatures to this report, he found the names of John Smiley and William Findley. Although these men yielded to the Constitution of 1790 afterwards, as we very frequently yield opinions here, yet they have given it, but a short time before, as their deliberate opinion, that the Constitution was adequate to perform all the duties required of it. Here these men have given it as their opinion that the principle contained in the Constitution of '76, on this subject, was a good and sound one, and that it ought not to be changed.

Now, as we have been referred to the Constitution of the United States as a model to copy after, in this respect, he would take the occasion to say, that even there he did not approve this principle of tenure for good behaviour. He would carry the same principle into the Constitution of the United States, in relation to the judiciary, which he was contending for here. He saw no reason why the national government should have the life tenure for its judges; and he looked upon it there as a part of that principle, which a portion of individuals in our land hold to, of

having a power somewhere so high and elevated that the people cannot reach it. This principle was introduced into the Constitution of the United States, by those who had a distrust of popular government, and an anxious desire that there should be some branch of the government, beyond and above the control of the people—a something for the people to gaze at; and that same spirit, he had no doubt, introduced it into the Constitution of Pennsylvania. It was no child of the early Pennsylvania democracy. He denied it. The Pennsylvania democracy has not now, and never did have any allegiance with it. Look to the votes in your legislature, wherever this subject of a Convention was before them, and you will find this to be the doctrine of all those who classed themselves as acting with the democratic party.

He would now take a view of the effects of this tenure, for a period of years, in the states in which it had been adopted, and this he looked upon as a legitimate and sound argument in its favor. He would first refer to the judiciary of the state of New Jersey, and he need not say any thing as to the character of the judges of that state, after the high eulogy pronounced upon them by the gentleman from the city, (Judge Hopkinson). Well, sir, it is well known, that the Chancellor of that state, is elected annually, and it is a fact, that Chancellor Williamson was elected between twelve and twenty years to that office, without interruption. He was also told, that the Chief Justice of Rhode Island had been elected for upwards of twenty years, by annual elections. In Vermont, in forty-five years, with judges annually chosen, they have had but three or four changes on the bench of their supreme court. In Providence county, Rhode Island, the president judge of their court, has been elected annually for twenty years. Experience then clearly proves that the people know how to appreciate the worth of a good judge. He was not however, disposed to bring our judges annually to be passed upon by the popular voice, yet he was not one of those who would treat with contempt, the popular sovereignty, as the gentleman from Chester, (Mr. Bell) had expressed it. He (Mr. B) now had and always had a reverential regard for the popular sovereignty; and it was because he believed, and his connection and experience with the people proved it to be true, that if there was only one feature in the character of our citizens which rose above all the rest, it was a deep rooted, fixed and immoveable regard for the principle of justice.

He could not suppose, for a moment, if a judge under any circumstances, for the purpose of favoring his own election or elevation, was to bind himself to give an unjust decision, that the popular voice would approve his course. He called for the evidence, when gentlemen made such charges as those, against the people of Pennsylvania. He contended that the popular approbation would never be given to acts of injustice. It was not in the nature of our people; it was not in the nature of Pennsylvanians to countenance injustice in any form. The gentleman from the city, (Judge Hopkinson) has said, cut your judiciary loose from all human authority. He has told you that the judges are but men, and liable to be led into temptation and corruption, unless you raise them up in this way, above the influences of the people; and the gentleman from Northampton, thinks it is necessary to give them money—to raise their salary, to make them independent. He would ask gentlemen, if their

judges were so liable to temptation now, what they would be, if they were cut loose from all human authority, without any restraint upon them, without any fear of the people or the popular branch of the government, and without any motive to good actions? He would ask gentlemen, what they would be then? The gentleman from Northampton, has told you that it is impossible, for any branch of the government to get along, without the approbation of the people of the state. Well, sir, how is this approbation to be obtained for the judiciary? Why, by making them, in some manner, responsible to the public will.

If you want to make a judge industrious, honest and faithful, and to keep him within the line of his duty, never let the public gaze be withdrawn from him. Let him know that the public are scrutinizing his acts, and will visit them with their condemnation, if they be arbitrary or corrupt. This responsability had a salutary effect on all your other departments, and so it will have with the judiciary. It answers a good purpose with the Governor, whose duty it is to execute your laws. It is in vain for your judges to decide on laws, if you have not an arm somewhere to execute them. But is it necessary that this executive arm should be cut loose from all human authority? Who would dream of such a thing as this? Sir, it is at variance with every principle of our government, to say that any power in the state should be cut loose from all human authority. The popular sovereignty should stand above all the powers of the government, and all those powers should bow to it with deference. The gentleman from Chester had spoken, on this subject, of the contempt for the popular sovereignty. Now he (Mr. B.) wished that voice to go from this hall, that the independence of the judiciary is to be sustained by a contempt for the popular sovereignty. He held to the popular sovereignty and he was not ashamed to acknowledge obedience to it. Lord Mansfield has said, that it was not the popularity of the day, but the popularity of the wise and the good, which he coveted. So was it here. It was the approbation of the wise and the good—the approbation of his fellow citizens—the approbation of the people of Pennsylvania which he desired; and he repudiated the raising up, in this free country, of any power above the people, beyond their reach and beyond their control. But let our judges receive the confidence of the community, let them not be looked upon with jealousy, but let them be supported by the popular arm, and then they will feel a proper independence. When the judges know that their acts are to be judged of by the people, through their representatives, at stated times, they will act independently, and honestly and justly. But raise them up above the people, and then the people will look upon them with distrust and with jealousy. As an illustration of this position, he would refer to a matter, without meaning in any way to introduce into this debate a political discussion. We all know that our Chief Magistrate deemed it to be his duty to place his veto upon a certain measure, without knowing whether it would meet the approbation of his countrymen. He, did so, however, and referred the matter to the popular sovereignty to decide upon. They decided upon it, and sustained him. This not only showed that he was right, but that he was strengthened by the strong arm of popular sovereignty. That is the kind of independence which every man in this country should look to, and which no man should attempt to disparage. But, whenever you attempt to set up a tribunal in the state, to be governed only by its own

will, without responsibility to any human authority, as the gentleman from the city, wished us to believe the judiciary ought to be ; you raise up a tribunal to counteract the intelligence of the people ; you entirely do away with all incentive to good actions, and destroy the popular sovereignty, and the spirit of your free government.

The gentleman from the city, (Mr. Hopkinson) has pointed us to the great names attached to our own Constitution, and to the Constitution of the United States, and has asked the question, whether we are wiser than those who have gone before us. He knew there was a magic in a name, and no men knew that better than the gentleman from the city himself. His beautiful eulogy on the father of his country, was but just and appropriate; but, sir, if we were here but to array great names, as precedents for the establishment of great principles, or for precedents as to any thing else, we might find great names to support the most outrageous practices which could be found in the whole catalogue of crimes. A crime could scarcely be mentioned, but that you might find great names to sanction it. This appeal to great names that is made to us, may have its effect. The names of Washington, Jefferson, Franklin and Hamilton, were entitled to respect, but after all what do they prove? They only prove that great names may be arrayed on opposite sides, on the great principles of government. We have known a time, in the history of the world, when there were great names arrayed on one side, on the subject of religion—when there was but an humble person on the other, yet truth being on his side, he prevailed. He knew that great names would have a great weight on this matter, but he hoped, that great truth would have a greater weight. If great names are arrayed against truth, and true principles of government, they cannot be of any avail. Why, we did not come here to yield to great names, we meet here to examine great principles, to compare opinions, to look to the results of wisdom and experience, to retain in the Constitution, all that was found by experience to have worked well, and to reject all which had not. Why, sir, great names amounted to nothing. Look at the names of your Clay's, your Calhoun's and your Webster's. Are they not great names? Yet, where is the great question of national policy, on which they have not entertained two opinions within the last twenty years. Then why should the charm which is drawn around great names have any effect here. The great truth stands before us, and let us judge from it. We are not here to decide what judiciary would be best for Great Britain, or for the United States government, but to look back to the operation of the system in our Constitution, and to look abroad, and see the operation in the Constitutions of our sister states, of the features which we propose to introduce into ours, and see whether they have been approved of there, and whether they would suit us here.

The present judiciary system of Pennsylvania, stands condemned by the people of Pennsylvania. It stands condemned by the legislative documents, and it stands condemned by this assembly. Then it is but for us to look abroad, and see how a judiciary, with limited tenure, has worked, and what would be the best system to give to the people of our state. He had attempted to show this, by a reference to those states which were made up in a great degree, of citizens of Pennsylvania. He had attempted to show this, by a reference to the states of Ohio, Indi-

ana and Michigan, who had rejected this life tenure; notwithstanding that they had left a state where it had existed for many years. He must claim these states as being the offspring of Pennsylvania. Virginia might claim Mississippi and Alabama, as being made up of her children, but Pennsylvania and New England must claim paternity to the three flourishing young states of the west, to which he had just alluded. Alabama, he knew, held to the life tenure, and other states might do so, but he was willing to take lessons of experience from our children of the west, for "out of the mouth of babes you may learn wisdom." He had no idea of those fine spun principles of government, which would set up a power in the state, independent of the citizens of the state, and the supreme power of the state. He would reject all those theories, and judge by the light of experience, and the clearly expressed will of the people of the state.

Mr. INGERSOLL* said that on this all important subject, it was his intention to have reserved what he had to say until he had heard the views and opinions of others, as he held his mind open to conviction, if sufficient arguments were adduced to convince him. His mind was made up as to the principle, but, as to the practicable application of that principle, he desired to hear all that could be said upon it. He was anxious to have the instruction of better judgments than his own. He had intended to listen to the argument of others, and would have held to that determination, but that the unexpected result of the adoption of the amendment of the gentleman from Beaver, had placed us all, or many of us, in somewhat of a false position, and required of him to break the resolution he had formed, and thus early to take the floor, and give his views to the Convention. His opinion, in relation to this matter, was that the Constitution was wrong and that it was susceptible of, and required amendment. How it shall be amended, remains to be seen. From the vote he gave yesterday, on the proposition of the gentleman from Beaver, it would be seen that he disliked that amendment, and he was not now sure but that he would move to amend it, when in order, by striking out all after the word "him," in the fourth line, and inserting, in its stead, an abridged, but substantial adoption of the colonial act of 1759, which proposes a tenure, for good behaviour, subject to the revisory power and complete control of the legislature; he did not pledge himself to make this motion, but he thought he should. Before he did so, however, he would go into an argument, of some length, on the principles involved in this question. He flattered himself, that there werem any members, probably a majority of the Convention, who are in doubt upon this subject, whose minds are conscientiously inclining to certain principles, and are yet uncertain as to the proper application of those principles. As had been said to him, personally, by the father of the Constitution of the

[*The speech of Mr. INGERSOLL, prepared by himself, will be found at the end of the volume. While courtesy and propriety required that the speech published by himself, should appear in the volume of debates, the Stenographer considered it as due to himself, and necessary to the connexion of the debates, to insert in its order, the speech as reported. Thus the various explanations of gentlemen, (not embraced in Mr. Ingersoll's publication,) and the omitted quotations; as well as some points of argument which escaped Mr. INGERSOLL's memory, but which called forth notice in subsequent speeches, appear in their regular course.]

United States himself, it is but respectful to yield something to others, and when we send our work before the people for ratification, we can tell them, we desired to get more, but we got what we could get. He felt the responsibility of the argument he was about to submit to the committee. Eloquence was entirely out of place here, and, if he were capable of it, he would not resort to it, and he must say, to take up the argument of his colleague from the county, in reference to the name of General Washington, being introduced here, by the learned judge from the city of Philadelphia, with all due respect to that honorable gentleman, he would say—that he might as well introduce the name of the father of his country, with all the influences, which must attach to that venerable name into a judgment, in a court of justice, as into the argument on this subject. It was as much out of place, in the one place, as the other. Let us reason together on this subject; let us talk it over calmly and dispassionately; and he would be obliged to any member of the committee, or individual in the gallery, if the rules of the Convention would permit it, who did not concur in any of the facts he should state, to correct him, so that he might have the opportunity of explaining and understanding the question rightly. He was fully sensible of the fearful disadvantages under which he took the floor to argue this question, because there was hardly an unworthy motive which could be imputed to any man, but what has been imputed to all those who are the advocates of any change in the Constitution of our state. On the other hand, every lawyer must know that we speak here with extreme peril. Why, if he said any thing, here, derogatory to the personal character of any of the judges, on your bench, he was liable to be indicted, tried and committed for it, and if convicted, put into prison. He knew, therefore, in what peril he stood, and he felt the delicacy of his situation. The learned judge had said, in the course of his argument, that no man, however high, no man, however cautious, knew, but that at some day or other, he might fall under the judgment of the judges of this world, as we all know, all men will come under judgment in the world to come. With this precaution, while he hoped that miserable feeling, called fear, was not altogether a predominant material of his constitution, yet he must say, that he ackowledged he had great apprehension on approaching this subject. He was fearful that he could not do justice to the subject, because he could not say any thing like the whole truth, in relation to various matters; because he knew he must speak, with great reserve.

The learned judge has told us, and his opinion is entitled to very great weight, that these men, by being commissioned judges, are not transformed into angels; that the judges were still but men, and therefore they being men, he (Mr. I.) supposed they retained all that feeling of dislike, all that dispositition to take revenge for any thing that might be said of them, which would exist in the bosom of any man. So that we may be made to feel any thing which we say here—our property or characters, or our liberties, may be made to answer for our saying—our children, our posterity, each may be made to feel it, therefore it behoves us to beware how we speak on this occasion.

This, Mr. Chairman, is all too true. A good man will be a good judge. Take, for instance, the late Chief Justice Tilghman, who has received, in my opinion, only a partial eulogy from the gen-

tleman from Northampton, (Mr. Porter.) I say, only a partial eulogy, because too great a eulogy could not be passed upon him. I believe that a purer, or a better man, never lived. He was in his sphere, what the Emperor Alexander called himself in despotism, "a happy accident" in our judiciary. I do not speak now, however, of particular cases; I speak of principles; for a bad man—and there must be such, for nature is not changed—a bad man, I say, may, some day or other, on the bench, make me feel the course I am taking on this occasion with great inconvenience. Therefore it is that I speak here, as I would not speak elsewhere, in conversation between myself and any committee of gentlemen, where the public press was not superintending our proceedings, and where we might consequently speak with much more force and freedom, than I should desire to do here. I feel all the disadvantages under which I address even a forbearing argument to the committee, on this particular occasion. Scarcely an unworthy motive can be imagined, that has not already been suggested, as impelling those who plead for reform. On the other hand, it is impossible to speak any thing like the whole truth, in its advocacy. In the first place, the utterer of offensive, however honest, truth, might be indicted, convicted and punished as guilty of defamation. And, even if that should not be so, still he must make enemies of the most dangerous kind; for the learned judge, the chairman of the committee on the judiciary, (Mr. Hopkinson) has told us, that there is no man, who does not, some time or other, fall within the power of the judiciary. Judges, he says, are quite as liable as other men, to unworthy passions and influences, and I must confess, that I do not feel, while discussing them, the natural and proper freedom of debate, in the effort to expose a system by views, unavoidably, personal.

I do acknowledge, Mr. Chairman, that I feel in some degree afraid. I acknowledge it, and at the same time, that this is not one of the general indications of my nature. I will endeavour, however, to do justice on this subject, as well as I can; and I believe it will be admitted, before I have closed the argument, I intend to submit, that I have not done injustice to any man, although I may speak of bodies of men with some hardness and disparagement. As to the importance of this subject, I have a word to say. I concur in all that has been said in that particular, by the chairman of the committee on the judiciary, (Mr. Hopkinson.) I will even go further than that gentleman has, and state my belief, that the importance of this question can not probably be over-rated. At the last summer session, I took occasion to say something on this point, and I will now repeat it. We may compress the whole matter into the compass of this single apothegm,—"justice, or the administration of justice, is our wordly Providence. It is the Deity on earth. All other political elements, are but elements; but justice is Providence upon earth. It is the attribute of God, represented by man." It is, therefore, (continued Mr. I.) impossible for any man to entertain for this subject, a more reverential and awful sentiment, than I do myself entertain. The patronage of the Governor, the right of voting, and other subjects which must claim the attention of this body, are, to my mind, as nothing in comparison with this. I believe, Mr. Chairman, that all the functions of the government may stand still, and that, if justice can prevail between man and man, there can be no risk. I concede, also, that judicial independence is indispensible to good government; and, with this

concession, I shall proceed to the consideration of my only postule, and that is, that, in order to be independent, it is not necessary that a judge must be irresponsible, or beyond the reach of the sovereignty of the state, whatever that sovereignty may be. The gentleman behind me, (Mr. Merrill) in an argument, which I do not hesitate to say, would, even if the Convention had met for no other purpose than to hear the facts which he has devloped, and the views which he has, with so muoh talent and ability, brought to bear on this interesting subject, amply repay the time which they occupied—has, with great candour acknowledged, as I understand him, that the Constitution is not perfect—that it is not accpetable to the people. The question with him is a question of recognizing what he deems the over-independence of the people; or, in other words, he entertains apprehensions of the people, whom he fears to trust with perfect self-government. That gentleman and myself agree in the principle, but not in the details; although I am not sure that we differ so widely. I deny, the virtues and assert the infirmities, of the Constitution, as it now stands. I opposed the report of the majority of the committee on the judiciary. I opposed also the amendment of the gentleman from Beaver, (Mr. Dickey) as adopted yesterday. I am not very cordially in favor even of the amendment of the gentleman from Luzerne. I confess I am somewhat in doubt. I am disposed to be, and acknowledge myself to be, a thorough reformer on this subject. I am for reforming the Constitution as it stands, and for putting something else in its stead. I prefer the amendment, as it is, to the Constitution as it is; I prefer the amendment, as proposed to that amendment; and it is possible that this body may yet suggest something better, or at least, more acceptable.

I call upon the gentleman from Allegheny, (Mr. Forward)—a highly respectable member of this body, and a distinguished lawyer of our state, I call upon the gentleman at the end of the desk, (Mr. Barnitz) though not of the same politics. I call upon all those gentlemen, who have denied the virtue of the Constitution, as it stands, to rally to some rational improvement—to give us something better than what we now have; and I, for one, will pledge myself not to be over-tenacious, as to what that improvement is to be. My argument, now, is to shew that we ought not to vote for the Constitution as it is—and I flatter myself that I will so put the matter before them, that there shall not be fifteen members of this body who will vote to retain the Constitution as it is. I again call, therefore, on the great majority of the Convention, to give us something better than we have now got; and we should indeed present an extraordinary spectacle to the world, if, after having ascertained that our Constitution is wrong, we cannot agree upon what is right. Condemned, unheard! as the learned judge (Hopkinson,) says. Yes, if you please, Mr. Chairman, but not untried. The Constitution of Pennsylvania has been tried in the balance, and has been found wanting The people are unanimous, or nearly so, in their reprobation of it. And, sir, I will even go farther, and shew that the much applauded Constitution of the United States, has not, in this respect, been satisfactory to the people. I say, I will shew it; I will pledge myself to do so. I will not condemn unheard, nor condemn untried; but I refer to arguments to prove that my positions are true.

It is known to us, Mr. Chairman, that a great majority of the mem-

bers of this Convention, came here prepared to substitute something better than our present Constitution ; and I shall be greatly mistaken if the votes of this body do not shew a very extraordinary minority indeed, of those who are disposed to follow the learned judge in insisting on the Constitution as it now stands. I shall hereafter endeavor to obtain a test vote or two, so that we may satisfy our minds in this particular. I feel somewhat hampered in my argument. I feel the fear I speak of, not only because of what may be said abroad--not only because of the judicial and other power which may be visited upon me or mine, hereafter, out of doors; but also because of the honorable judge (Hopkinson) himself, who is now before us, as the chairman of the committee on the judiciary, and as the champion of the Constitution of the state of Pennsylvania. I have grown up, in affectionate reverence for his person, and deference for his judgment. And I feel oppressed by reason of all this. I can not do justice to the subject, for fear that I should say anything which might appear to be in contradiction to the sentiments I entertain towards him. Owing, however, to the peculiar position which that gentleman occupies as the head of the committee on the judiciary, I shall feel myself bound, inoffensively and with great deference, to notice some of the arguments which he has brought forward. I hope I shall have credit for the exercise of great forbearance, as I certainly intend to exercise it. It is my purpose merely to argue the matter with him.

I proceed then, Mr. Chairman, to the accomplishment of this duty. Two methods of approaching the subject have been presented by the learned chairman of the committee on the judiciary, and I shall follow his example. The first was historical; the second argumentative. The historical part was laid down in chronological order. I should rather have taken it in some more intellectual method, but I care not. I will endeavor to follow this method, and if I divert at all from the mere graces, I only, do so because it may tend to clearness, to a better elucidation of my positions.

What have we before us ? In this first place, we have all nations of antiquity and other nation, save our own. In the second place, we have England—and, in the third place, we have our own country. The question now is a mere question of tenure. And here let me premise that the question of tenure has been elevated into an importance, which does not belong to it. I believe that the system of jurisprudence is vastly more material to the good administration of justice, than is the tenure of office. Nevertheless, the question now before us is one of tenure, and to this I shall address myself.

We have, then, before us, in the first place, the argument as to all the nations of antiquity. In answer to this I will say, that no such tenure, as that during good behaviour, was ever known until the year 1701 in England, (thirteen years after the revolution of 1688,) and that no such tenure existed in all the known world beside. Is this no argument? The learned judge has not taken the trouble to advert to it, nor has any other gentleman who has addressed the Convention on the subject. Suffer me to say, Mr. Chairman, that I should look upon him as a very bold and rash man who would turn his eye back to Greece, Rome, France, (aye, sir, even France—of the jurisprudence of which country, the gentleman from Union spoke in terms of not the most pleasant kind)—to

modern Italy, to Germany, to Spain, and would deny the admirable qualities of the established systems of administering law which have obtained among them, together with these celebrated codes, in all things except in matters of personal controversies. As to every thing that relates to property, I have said all my life—and I repeat now, although I am aware that I shall differ with nine-tenths of the lawyers who hear me—but I say that the civil codes of those countries are preferable, so far as the protection of property is concerned, to any thing which we can show, as connected with the independence of the judiciary. I say, sir, he is a bold and rash man who will deny it, and who will not condescend to look to the wisdom of antiquity, and of modern ages too, and learn that justice may be well administered by short-timed magistrates; by dependent magistrates—by half paid magistrates—by magistrates who are subject to all those influences which have been spoken of here. It has been so—it may be so again. In reference, however, to all matters affecting the personal liberty of man, I will argue that it is a thing almost unknown, except in England and in this country. I will freely acknowledge that English justice protects personal liberty much better than that of other nations. But has not the subject been misunderstood and misrepresented even as to this matter?

But, Mr. Chairman, how stands the law in relation to the matter of property in England. Who gave us that code which every lawyer in the state has *ground* into him? Why, those very judges who sit by the most contemptible of all tenures; those very judges who hold the office upon the mere pittance of salary, not upon the tenure of good behaviour, but liable to be removed at all times, at the will and pleasure of the monarch. Did the gentleman (Mr. Merrill) ever hear of Lord Coke? Did he ever hear whether that personage compiled any thing which added to the law learning of England—or to the law learning of Pennsylvania? Did my friend ever read Coke's Reports? I may have over-rated them; but, if not, they are the scriptures of our jurisprudence—not to speak irreverently. He sat by no independent tenure—he never heard of the tenure during good behaviour. He was thrust from office without having committed any offence, and all the judges of those times were liable to similar treatment. They depended, for the tenure of their office, altogether on the arbitrary will of the king. *Hale* swore allegiance to Charles the first, and sat under him—then under the Commonwealth—then under Charles the second—and so forth, under others. All the titles to our liberties and our lands—to our reputation, and the many advantages of which we justly boast, above all other nations, and, in short, our whole system of property, are established by Coke and Hale and their peers of those times, when not one of them held his office by the tenure of good behaviour. I do not now say any thing about the state trials referred to by the gentleman from Union—but I set aside that excellent democrat, Oliver Cromwell; and I say that Coke, Hale, Bacon, and other great judges, never heard of such a thing as the tenure during good behaviour. And when my friend from Union, (Mr. Merrill) who made one of the best arguments I have ever listened to, in point of liberality and intelligence—when, I say, he speaks, as he did speak in disparagement of the code of France, until, by charter, the judges were rendered irremovable, let me ask him what is the code of modern France—not the code as given by the charter?

Mr. Merrill begged leave to explain. He did not, he said, refer in a tone of disparagement to the laws of France, or to the mode of the administration of justice in that country, I had been admonished, said Mr. M. by the gentleman from the county of Philadelphia, and I avoided reference to the revolution in France, or to any transaction which took place during that revolution—stating that that gentleman, and all others, knew more of that revolution than I did. What I said was merely in answer to a special reference which the gentleman had made out of doors.

Mr. Ingersoll resumed. I accept, Mr. Chairman, with great pleasure, this first correction, and I hope that I may undergo many more before I close my argument.

But I was about to state that, among other irregularities or infirmities in my character, I have been always a Bonapartist; and I call the gentleman's attention to the fact, that the most splendid accomplishment of Napoleon's reign—that which will outlive the renown of all his victories, and which stands as the most magnificent monument of his reign, is the code of laws called by his name—and framed by judges and lawyers dependent on his will. While the recollection of his triumphs, like the colors of the rain-bow, shall be passing away; when they shall have become eclipsed, that code will stand for ever as a monument of justice—truth and might. Go, therefore, where you please, in relation to matters of pure *meum and tuum*. Go to antiquity! Go to England before the revolution of 1688! Go to France at any time! It is a mistake to suppose that the question of tenure has not been over-rated. To make a judge wise, or to make a judge an administrator of wise or just laws, it is not, in my judgment, necessary that he should hold his office for life—or at what is called an adequate salary or compensation. Such, Mr. Chairman, is not the fact; experience demonstrates the contrary.

Having thus disposed of the preliminary view of the matter, I come next to the history of England in this particular. And here I flatter myself that I shall be able to shed some light on the subject. It may, indeed, be borrowed light, but it will not be the worse for that.

The act of 1701 was the offspring, in England, says the gentleman, of the revolution of 1688. Undoubtedly it was so. It is a noble scion of that stock of human liberty, which was then for the first time planted in that soil. 'Till then, a judge in the courts of England was a mere deputy of the king—commissioned to do his high will and pleasure, whatever that might be—a mere *locum tenens*—having no authority, or discretion, or judgment of his own, and simply carrying out the high behests of his master, (I am reminded here, by my friend, that James the first sat himself in court in full state, and adjudicated causes.) A judge, in those times, was a royal deputy, and no more—a mere emanation of royalty up to that period; and as the gentleman from Union (Mr. Merrill) says, before this time, in ancient days, amongst the Romans, a judge and a high priest were the same thing—they were elected—if I mistake not—and elected, too, by the Roman rabble. But be all this as it may, let me come to the inquiry what the act of 1701 was. This is the corner stone of the argument—this is the great principle involved in this discussion. What was the act of 1701? It was an act by which the responsibility of the judge was transferred from the king to the people. This was the whole of it—bacause who are the people of England?

The people of England are represented as omnipotent. The difference, in this respect, between us and England is, that here the people remain entirely sovereign; whilst in England the sovereignty is conferred on the parliament. And all which was accomplished by the act of 1701—although it was a great victory which no man, with English blood in his veins, can regard with any other feelings than those of triumph—was this—that it transferred judicial responsibility from the monarch on the throne to the monarch among the people. In like manner the French charter, granted by Louis, contained nothing more than a similar improvement. He capitulated no more than this; that is, he said, in substance, to the people, I agree that, hereafter, the judges instead of being entirely dependent on me, shall be dependent on you and me together. He transferred this responsibility after the model of the English. He was what was called a *doctrinaire;* he gave them a British Constitution—that is to say, instead of the judge being dependent on the will or caprice of the monarch, he was made dependent on another authority. And when my venerable friend who has been styled, very appropriately I doubt not, the father of this Convention, spoke of destroying the independence of the judiciary, I take it for granted that his meaning was, that the independence of the judiciary was to be so far destroyed, as to be a transfer of the dependence of the judges from one quarter to another. This, I presume, was the idea which that gentleman intended to convey.

Mr. Chairman, since the glorious revolution in England of 1688, and since the revolution in France, what has been the universal tendency of christendom? The constant tendency of mankind has been to greater fredom; to take from the sovereignty of one, and to confirm that of the community; until, both in England and France, greater liberty, in some respects, has been established, than many Americans think compatible even with our free government. I hold in my hand, Mr. Chairman, a late publication containing a very interesting article, and from which I will presently read a single eloquent and argumentative passage. It is an article which is to be found in the last number of a new Magazine, called "The United States Magazine and Democratic Review," and the object of which is to show that the tendency of all modern days—(and, I suppose, we should all rejoice in the fact) that the tendency of all modern Europe has been to republicanism ever since the revolution of 1688—no man doubts that the results of the French revolution had been immense. And no man doubts that the price paid for that revolution was cheap—low, for the great benefits which have been produced, by it to the people—the poor people—or, as they are sometimes called, the dear people. Voltaire, speaking of Queen Elizabeth, says, she loved her people, and then asks, with a genuine sneer, who else ever loved the people? But, sir, the people, whether they be loved or feared, have been gaining, and those who have heretofore possessed sovereignty contrary to the will of the people have been losing, part of that sovereignty which, by means of perpetual attention has been going to the people. The people of many nations have now become their acknowledged sovereigns. I speak of facts merely. We have been warned against the mastery of the people, by historical illustrations of its arbitrary excesses, drawn from Grecian, from Roman, and from English history. In the instance quoted yesterday by the delegate from Union, (Mr. Merrill) what was the fact? When the people called upon Pontius Pilate, a judge in those days, though I

do not know by what tenure he held his office—to sacrifice the author of our holy religion, Pilate hesitated, and told them that he found no fault in him, and what did the people say? They said, if you do not give him up to be sacrificed, we will complain of you to Cæsar. I beg that my friend (Mr. Merrill) will take the trouble to look at the nineteenth chapter of John, and he will there find that it was not from the fear of popular violence that Pilate acted. The people, so far as they alone were concerned, might have shouted at the judgment seat until they were blind, and he would have treated them all with scorn, had it not been that they threatened him with the vengeance of his master. They said, we will appeal unto Cæsar. All other threats, save this, would have been thrown away on Judge Pilate. It was from the fear of Cæsar that he yielded, and not of the populace, whom he despised. I request the gentleman to refer to the account given of the first christians, by Tacitus. There is no fact in history better proved than that they were sewn up in the skins of wild beasts, and were publicly devoured by dogs, to amuse the people. And when, therefore, a man called himself a king—because, it will be remembered, that this was the offence of our Saviour—that this was the crime on which he was arraigned, and condemned to death upon the cross—and in allusion to which the crown of thorns was put upon his head—when he said that he was a king, and the people, for that declaration, called for his destruction—it was well known at the time, or it was soon after shewn, that all which the people said and did on that occasion, was the mere evidence, not so much of their own feelings, as of the feelings of the despot who ruled them. They threatened the displeasure of Cæsar. They threatened what we have seen here—what we do see here every day. They threatened that which has been mentioned here as an argument. They threatened something like the Jersey case, with which we are all familiar. They threatened the "no Popery" cry, as it is properly called. They threatened that sort of punishment which was the only one in vogue in that day—the punishment of the block. We, in our day, Mr. Chairman, have substituted a much more mild and effectual punishment; that is to say, we have substituted the ballot box for the block. It was, then, not a threat of people, but of imperial vengeance.

I come next, Mr. Chairman, to the reign of George the third, and to the act by which he propitiated the people of England; I allude to the act of 1762,—a subject, suffer me to say, which is not sufficiently understood—a subject which the highly learned and respectable gentleman at the head of the committee on the judiciary, (Judge Hopkinson) will excuse me for saying he might, by looking farther, have ascertained more of the philosoply of, than he has yet given to the committee. I said, at the outset of my argument, that I would shed bright light upon this investigation. I trust I shall not disappoint the expectations I have raised. I will ask the attention of the committee, for a moment, to the 10th vol. of Smollett's Continuation, Hume's History of England. At page 150 of that book, in his account of this event, you will find that this was altogether a mere affair of salary—a trick of salary. He says:

"In the beginning of March the king proposed a step for securing the independency of the judges, which could not fail to impress the subject with the most favorable opinion of his royal candor and moderation. In

a speech from the throne, he informed both houses of parliament that, upon granting new commissions to the judges, the present state of these offices fell naturally under consideration. That, notwithstanding the act passed in the reign of king William III, for settling the succession to the crown, by which act the commissions of the judges were continued in force during their good behaviour, yet their offices had determined at the demise of the crown, or in six months after that event, as often as it had happened. That is, he looked upon the independency and uprightness of the judges as essential to the impartial administration of justice, one of the best securities to the rights and liberties of his subjects, as well as conducive to the honor of the crown, he recommended this interesting object to the consideration of parliament, in order that such further provision might be made for securing the judges in the enjoyment of their offices during their good behavior, notwithstanding any such demise, as should be most expedient. He desired of the commons, in particular, that he might be enabled to grant and establish upon the judges, such salaries as he should think proper, so as to be absolutely secured to them during the continuance of their commission," &c.

Thus continued Mr. I. you perceive that the act of 1701—which transfered the judicial responsibility from the crown to the parliament of England—or, in other words, to the people of England—was in this instance carried out a little farther by fixing the salary; and we now hear in what manner it was fixed. It is absolutely ludicrous to see how the matter was played with.

"They forthwith," the historian says, "began to debate upon this subject, and their resolutions terminated in a law, importing, among other articles—that such part of the salaries of the judges as was before payable out of the yearly sums granted for the support of the king's household, and of the honor and dignity of the crown, should, after the demise of his present majesty, be charged upon, and payable out of all or any such duties or revenues, granted for the uses of the civil government, as should subsist after the demise of his majesty, or of any of his heirs and successors. Thus the individuals, intrusted with the administration of the laws, were effectually emancipated from the power of the prerogative and all undue influence."

If I am not mistaken, resumed Mr. I. the old gentleman had lived for fifty years afterwards—he died, I believe, in the year 1820. So that all this vast independence of the English judiciary even in salary, did not begin until, as I suppose, the year 1820. It was, however, a mere affair of salary—and it was a mere affair of that despised thing, called *popularity*. The king of England was in the honey-moon of his marriage with the people—the dear people—and I will presently show you what was said of him, by one of the wisest and best, and most loyal of his subjects. I do most anxiously desire the attention of the learned chairman of the committee on the judiciary, to what I am now about to read; and I think that I shall be able to shed a flood of light on the subject. That gentleman told us that the complaints which were poured in upon us in relation to our judiciary, (alluding to the petitions from the county of Fayette) were signed by nobody knew whom—and came from nobody knew where. The learned judge has repeatedly and correctly told the committee, that if there was any thing to be relied upon in this

world, it was the opinions of men of worth, and that among the best evidences which we can have on this question, are the opinions of learned men. I shall, therefore, ask his attention and that of the committee, while I read from Boswell's life of Doctor Samuel Johnson, vol 2—page 175—what that learned philologist has made known as his opinion. And I cannot refrain from introducing it with the remark, that Judge Hopkinson, or any other judge, by inflexible rule of law, would reject even the oath to a simple fact, of any witness, however unexceptionable as a man, proposing to give testimony, much less pronounce opinion, in any matter in which he had the slightest interest. The opinion of Dr. Johnson, therefore, as he was perfectly disinterested, and, as he was undoubtedly well informed, is entitled, according to the philosophy of this legal rule, to much greater weight, than that of any judge, on this question. The opinion was delivered in the year 1775—the eventful year of our revolution.

Boswell says, "on Friday, April 14th, being good Friday, I repaired to him in the morning, according to my usual custom on that day, and breakfasted with him. I observed that he fasted so very strictly, that he did not even taste bread, and took no milk with his tea;—I suppose, because it is a kind of animal food."

So added Mr. I. we find this gentleman of literary and philosophical acquirements in the very best state of animal preperation for the judgment he is about to deliver.

Boswell proceeds: "He entered upon the state of the nation, and thus discoursed:" Sir, the great misfortune now is, that government has too little power. All that it has to bestow must, of necessity, be given to support itself. Our several ministers, in this reign, have out-bid each other, in concessions to the people. Lord Bute, though a very honorable man—a man, who meant well—a man, who had his blood full of prerogative—was a theoretical statesman—a book minister—and thought this country could be governed by the influence of the crown alone. Then, sir, he gave up a great deal. He advised the king to agree, that the judges should hold their places for life, instead of losing them, at the accession of a new king. Lord Bute, I suppose, thought to make the king popular, by this concession; but the people never minded it; and it was a most impolitic measure. There is no reason why a judge should hold his office for life, more than any other person in public trust. A judge may become corrupt, and yet, there may not be legal evidence against him. A judge may become froward from age. A judge may grow unfit for his office, in many ways. It was desirable, that there should be a possibility of being delivered from him, by a new king. That is now gone, by an act of parliament, *ex-gratia* of the crown."

Here, then, was the opinion of a distinguished man, who was as perfectly disinterested as he was well informed on the subject. And, he, (Mr. I.) believed, so far as he had read—for he did not pretend to vie with the researches of other gentlemen—that with one exception—the opinion of Thomas Jefferson, it was the only one which could be brought to bear on the subject. We might get the eulogy of Washington, we might point to the apotheosis of that great man—we might speak of our admirable federal Constitution and the wisdom of our ancestors, but here we had the whole subject before us, and here, too, was an argu-

ment which was altogether irresistible. He felt that he must be a little personal—though he meant no offence—to the learned judge, (Mr. Hopkinson.) If his argument were a little *ad hominem* in its bearing, he felt quite sure that gentleman would excuse him. Suppose that Chief Justice Marshall and Judge White, had been called before a court to testify in a case, and that a lawyer should rise in his place and ask if either possessed any interest in its decision, and it appeared that they had, even to the amount of one cent, the judge would say—"stand aside John Marshall and William White, I shall not suffer the jury to hear what you have to say on the subject—because your evidence is calculated to bias them." We were (continued Mr. I.) to take the opinion of that judge, or any other judge—for, surely if he were a patriot, loved justice, and respected and honored his profession, he would not act otherwise. But what, he would ask, was the evidence of any man compared to that which he (Mr. Ingersoll) had brought forward in support of the position which he contended for? The evidence which he had adduced, was that of the wise, the good, and the disinterested. He hoped the Convention would suffer time to explain the English system, for he apprehended that it was misunderstood. By the act of 1762, the judiciary was transferred from the king to the parliament, yet the preponderating influence of the king, in all political questions was felt, as, for instance, in state trials, but he did not interfere in matters of property. He knew a young man, who arrived in England during the trial of Colonel Despard, a very gallant officer, and who observed to Mr. Rufus King, at that time our minister at the court of St. James, that he had read the report of the trial, and thought it very hard that Colonel Despard should be condemned to be executed for treason, upon such light proof as had been brought against him. After listening attentively to the remark, Mr. Rufus King replied—"my dear young friend—you know very little of England, and have but an imperfect idea of the power of the crown, if you suppose that, if the king desired this man's death, Lord Ellenborough would not carry his wish into effect."

Sir, (continued Mr. I.) the young man then, is the old man who now stands before you. I never shall forget the horror which this remark impressed upon my mind at the time. The royal influence, even at this time, is still very powerful. About the period to which he, (Mr. Ingersoll) had referred, Bonaparte, who was first consul—a dictator, and not emperor—requested the Brtish ministry to prosecute, on his account, a man named Peltier, for having libelled him. They did so, and he was most ably and eloquently defended by Sir James Mackintosh; but notwithstanding this, the man would undoubtedly, have been convicted, had it not been for the glorious, manly, and independent jury who sat in the box. The subserviency of the judiciary were on this occasion again abundantly apparent.

We totally misunderstood the English judiciary, if we imagined that it was irresponsible. In his opinion, it was, in every respect, an improper standard for ours. He would mention another fact which he had obtained from high authority. He had been assured, that during the whole reign of George III. not a single judge had been appointed, who was not on the right side of politics. Yes, for fifty years had this been the case. Now, he would ask what was the English tenure? Why, it

was literally what the act of 1701 proclaimed it to be, that of good behaviour.

There was no such thing as a superannuated or an indolent judge in England, sitting upon the bench; for, the moment he became obnoxious, from any cause, he was got rid of—pensioned off. He had no hesitation in saying, that, at least one judge in the supreme court of the United States, and more than one in the states, would soon be removed from their stations, if the vote of the people, and that of the judicial brethren, were to be given. He entertained not the least doubt of it. When these infirmities existed, a reason was furnished for removal; either from the bench or any other office. Excessive bad habits, debauchery, gambling, drinking, and every species of crime of that character, and violation of the principles of morality, all justified a resort to the power of removal. These were instances which did occur, as every lawyer here well knew. In England, the pension system relieved the public of men addicted to these vices. The popular power was always in full vigor. When a judge was no longer fit for duty, he was instantly removed. The duties of an English judge far transcends the labors of an American judge. He had no pleasure, no enjoyment, no respite from labor. He was, however, allowed a good salary for his services; and when he should be found unable, through age or other infirmity, to discharge his duties satisfactorily, he would retire and be allowed a pension. He (Mr. I.) did not know, indeed, he was not sure, that this was not as good a course as could be adopted to get rid of judges, who, from various causes, might be unfit for the duties pertaining to their office. Perhaps, he might as well mention what Mr. Madison once said on this subject: that distinguished man said that he did not know but that the adoption of that plan in this country, would be found beneficial to the people. This, however, was a relief, as yet unknown to our judicial system, and probably would be. It was to be borne in mind that English judges do not exercise that political jurisdiction, which was considered a principal function of ours, that the House of Lords, by appellate cognizance, superintend all the judgments of the courts within the kingdom, and the king in council, as he believed all those of the foreign provinces, it was plain, that the English system differs totally from ours, both as to tenure and jurisdiction.—There, the judiciary, influenced by the executive, was strictly responsible to the legislature, and the kind of independence, attempted by our Constitution, which was an experiment, altogether untried, is unknown in England or any other country, as it has proved, on trial in ours, a vicious system and a failure.

Let us have the system of English responsibility here, and he (Mr. I.) would go for it. The tenure of the judges in England, was during good behaviour, and not for life, and their responsibility to the people was complete. And, as he had before observed, when they were found unfit to discharge their duties, they were removed—though bought off—taken off by a pension. The political power of the English courts, was little or nothing. Every one knew that an English judge never attempted to pronounce on the constitutionality of an act of parliament. Was the first judge there, a life officer? Did he hold his appointment during good behaviour? No, he did not. He sat merely during the pleasure of a party; and the master of the polls also held his seat at the acknowledged

political pleasure of a party. It was not, then, at the pleasure of the people, that the English judges held their offices. There was a wide distinction between what the learned judge, (Mr. Hopkinson) seemed to suppose was the condition of the English judicial tenure, and that which really existed. The judges, as he had just remarked, held at the habitual pleasure of a party. And, as a striking evidence of the fact what he (Mr. Ingersoll) had stated, there were in existence, at this time, no less than four chancellors, viz: Eldon, Lyndhurst, Brougham, and the present sitting chancellor, whatever his name was, for he did not now recollect it. These were the men, it might be said, who made the judges—for the king, before he appointed a judge, always consulted the lord chancellor. The Duke of Wellington was the first to set the example of introducing a man, not of his own party, upon the bench—a gentleman of the name of Parke. He (Mr. Ingersoll) would repeat, that the English system was not our system. It was an entire mistake to suppose so. He wanted to see responsibility, and independence also, in our judiciary. He wished to distinguish between irresponsibility and independence. His opinion was, that the amendment of the minority committee, looked more to the accomplishment of these ends, than any other that had been presented to the inspection of the body—therefore, he was in favor of it. But if, in the course of our deliberations, a better one than that should be suggested by the wisdom of the Convention, he would support it. He saw that his friend from Allegheny, (Mr. Forward) had this subject much at heart; he felt sure that that gentleman agreed with him in the opinion that the Constitution, as respected the subject now under consideration was defective. He would ask, then, if there was not some medium—some mutual ground upon which gentlemen here, could meet and agree?

He came, now, to his own country—to America, and he would examine first, our colonial, secondly, our independent judiciary in Pennsylvania; and thirdly, would take some notice of that of the United States, which had been pressed into the argument as vindicating in principle, that of Pennsylvania.

The mistake into which the learned judge (Mr. Hopkinson) fell, in imputing to the colonial history of the country—the existence of the life tenure, or system of good behaviour, had been abundantly shown by the admirable view taken of it by the gentleman from Union, (Mr. Merrill.) The gentleman was entirely and unquestionably mistaken in supposing that it was the desire of the people—that they anxiously and earnestly wished for the good behaviour tenure, or that a judiciary, so commissioned ever existed in the colony of Pennsylvania. These facts were clearly shown in the excellent speech of the gentleman from Union, which displayed researches and developed truths upon this interesting inquiry, as honorable to that gentleman as the candor with which he treated the subject, and might be deemed among the important advantages which this Convention should confer on the community. It was quite clear that no such tenure ever obtained in Pennsylvania, till the formation of the present Constitution. In Shunk's collection, page twenty-four, there was a note which might lead to a different conclusion. It ran as follows:

"By the charter of 1683, the judges, treasurers, and master of the rolls, instead of holding their respective offices for one year, are to

hold them so long as they shall well behave themselves in those capacities."

He would repeat, then, what he had already said, that it was perfectly clear, that the gentleman from the city, (Mr. Hopkinson) was mistaken in reference to the existence of the good behaviour tenure. The gentleman from Union, he thought, had placed the matter beyond all disputes.

Mr. HOPKINSON (interrupting) said, there was some mistake.

Mr. INGERSOLL observed that he had tried the case of an invention before Judge Hopkinson, and pleaded the priority of it, which the learned judge ruled as amounting to nothing, as the invention had never been used.

Mr. HOPKINSON supposed the gentleman (Mr. Ingersoll) knew that had nothing to with the argument.

Mr. INGERSOLL replied that he would accept the explanation of the learned judge. He hoped that the committee would excuse him while he read a few extracts from Proud's History, for the purpose of showing what the independence of the judiciary was in the time of William Penn. On page 305, there is this language:

"William Penn, proprietor and governor:

"To my trusty and well beloved friends, Thomas Lloyd, Nicholas Moore, James Claypoole, Robert Turner, and John Eckley, or any three of them, at Philadelphia—

"Trusty and well beloved, I heartily salute you; lest any should scruple the termination of President Lloyd's commission with his place in the provincial council, and to the end that there may be a more constant residence of the honorary and governing part of the government, for the keeping of all things in good order, I have sent a fresh commission of deputation to you, making any three of you a *quorum*, to act in the execution of laws, enacting, disannulling, or varying of laws, as if I myself were there present, reserving to myself the confirmation of what is done, and my peculiar royalties and advantages.

"Frst—You are to oblige the provincial council to their charter attendance; or to take such a council, as you think convenient, to advise and assist you in the business of the public; for I will no more endure their most slothful and dishonorable attendance, but dissolve the frame, without any more ado; let them look to it, if further occasion be given.

"Secondly—That you keep to the dignity of your station, in council and out; but especially to suffer no disorder in the council, nor the council and assembly, or either of them, to entrench upon the powers and privileges remaining yet in me.

"Thirdly—That you admit not any parleys, or open conferences, between the provincial council and assembly; but one, with your approbation, propose and let the other consent or dissent, according to charter."

Then, in page 306, Penn says:

"That you, this very next assembly general, declare my objection of all that has been done since my absence; and so of all the laws, but the

fundamentals; and that you immediately dismiss the assembly, and call it again, and pass such of them afresh, with such alterations, as you and they shall see meet; and this, to avoid, a greater inconveniency, which I foresee, and formerly communicated to Thomas Lloyd."

In page 308, he says, (in a letter addressed to the commissioners:)

"Of three things which occur to me eminently," after stating the two first. "Thirdly, That you retrieve the dignity of courts and sessions, and remove all persons unqualified in morals or incapacity," &c.

This was the Pennsylvania idea of an independent judiciary at that time. That there was a constant desire to obtain an independent judiciary in Pennsylvania, he would agree; but that was for an independent, not an irresponsible one—for a judiciary to be independent of the crown, of the parliament, but not of the people. In 1684, as had been shown by the gentleman from Union, (Mr. Merrill) the judges were appointed for two years, and so continued till 1706, when the dispute occurred between the deputy governor and the assembly, an account of which had been read from the curious manuscripts obtained by that gentleman out of the archives of the state. The spirit which ran through that manuscript was a noble spirit. It was a spirit which had animated our militia, in the day of trial; and it was sometimes to be found in those who wore dirty shirts and were without shoes to their feet,—and which when found embodied in the mass, he (Mr. I.) entertained more respect for, than he did for all the selfish wisdom of the wisest individual that had ever lived or that he had ever read of. He religiously believed that the voice of the people was the voice of God. He believed that the mass of the people could not be actuated by bad passions. That they might be misled by demagogues, evil-minded and desperate men, who were ready to go all lengths, and commit any excess to attain their objects, he was willing to admit. But, to assert that a body of men could be permanently wrong, was a declaration to which he could not give his assent. "I think," (said Mr. I.) it stands to reason, and is an ordinance of the Creator, that a mass of men such as the learned judge has described, must be more rational and less selfish than any one man; that they are less liable to bad passions, than any individual, and better endowed with instincts of salutary regulation and self-preservation."

Mr. I. observed that this was his opinion in reference to the popular voice. The impression upon his mind was, that the people desired a more responsible and independent judiciary, appointed for a shorter term than the present. He thought his friend from Union was mistaken in relation to the effect and operation of the act of 1827. According to that act, the courts here were to have the same jurisdiction as those in England. We were told that, in the year 1743, all the judges in Lancaster county, were removed by the Governor; and in 1756, as we read in Franklin's works, published by Duane—the judges were appointed during good behaviour. No doubt that Franklin desired that the judiciary should be placed here upon the same footing as in England—made responsible to the people and no other power. Here he (Mr Ingersoll) would remark that Franklin's works were much better published by Sparkes than by Duane; and, in 1759, we saw a display of the wisdom of our ancestors. Here we had, what he longed to go back to, and that was a responsible, independent judiciary—responsible to the voice of the

people, and no other power. Give him a judge removable by the Legislature, and in the power of the people, so that they could get rid of him if they deemed it necessary. With respect to what had been quoted by the learned judge about the declaration of independence, he would reply to all that in a few words. In the Annual Register, p. 203, would be found the petition of the American Colonies, in 1774, to the king and parliament of Great Britain. Also, in p. 220, was the address, and there followed in p. 230, a remonstrance. Now, he would ask, what all these documents prayed for? Why, for a judiciary independent of the king and parliament—a transfer of the power over it from the crown to the people, not of England, but of the American Colonies. Here (said Mr. I.) is the petition of the American congress to the king; and the petitioners complain that:

"The judges of the courts of common pleas have been made entirely dependent on one part of the legislature for their salaries, as well as for the duration of their commissions. Counsellors holding their commissions during pleasure, exercise legislative authority."

The petition was signed by most of those who afterwards signed the declaration of independence. Then followed the address of our neighbors in Canada; and next came the petition of American citizens in London, p. 230, in which the following paragraph occurs:

"The appointment and removal of the judges, at the pleasure of the Governor, with salaries payable by the crown, puts the property, liberty, and life of the subject, depending upon judicial integrity, in his power," &c.

That was the complaint, and the only complaint which was made on that subject. He thought it strange—very strange, he confessed, that the learned judge should have referred to this recapitulation of authority—to the declaration of independence. What, he desired to know, was the language of that document? Why, it was that the judges, instead of being dependent upon the people of the colonies, were dependent upon the king and parliament of Great Britain. Who, he would inquire, was the author of the declaration of independence? He who was designated the apostle of liberty, and he was one of the foremost and strongest advocates of a judiciary dependent upon, and responsible to the people. That great man went even farther than he (Mr. Ingersoll) felt inclined to go, and he was disposed to stop a little short. It was known that he who drafted the memorable document to which he had referred, denounced the life tenure, as a vice and an infirmity in our system. The only complaint which was made by Franklin, Jefferson, and others, was that the popular control over the judiciary was usurped by the king and parliament. Their idea of judicial independence was, that the judges should be dependent upon those from whom they received their salaries, and not upon those living elsewhere. In the book then before him, (said Mr. I.)—between the two petitions which had been referred to by the learned judge, (Mr. Hopkinson) and not read by him—would be found some proceedings in regard to the impeachment of Judge Oliver, by the legislature of Massachusetts. The only charge against that official functionary was that he received his salary from the king. He (Mr. I.) was afraid that our notions relative to impeachment had changed very much since that day—that a judge might take his salary from the devil, (he was going to

say,) and it would not be regarded as an impeachable offence. He professed himself to be the advocate of a temperate, considerate and judicious reform. He desired that a change should be made in reference to the judiciary, and that we should take a fresh start. It had been remarked, some time since, that we were then in the midst of a revolution. We were not then in a revolution in arms, nor had we been since. But we are, and have been since the 4th of March, 1776, and he hoped we always should be—on monetary affairs as well as others. The fact was, we had been trying experiments on every thing. All that he desired was, so to amend the Constitution, that we might begin a new career; and the way was, to cut out the decayed and infirm parts, and put something in lieu of them, suited to the exigencies and requirements of the present times.

Mr. Ingersoll, at this stage of his argument, yielded the floor, and the committee rose and reported progress; and,

The Convention adjourned.

WEDNESDAY AFTERNOON, November 1, 1837.

Mr. Fleming, moved to dispense with the rule, in order to take up the following resolution offered by him this morning, viz:

"*Resolved*, That this Convention will adjourn on the 30th instant, to meet in the city of Philadelphia, on Monday, the 4th of December next."

The question being taken, it was decided in the negative—ayes 36.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'Sherry in the chair, on the report of the committee, to whom was referred the fifth article of the Constitution.

The question pending being on the motion of Mr. Woodward to strike out all after the words, "section second," and insert in lieu thereof the report of the minority, as amended by the amendment of Mr. Dickey,

Mr. Ingersoll resumed his remarks. He had read this morning one of the few direct authorities to be found among the wise and learned. He had quoted the opinions of Dr. Johnson. He would now add another, which was worthy of consideration in connexion with the declaration of independence. In one of the letters of Thomas Jefferson, published by his family since his death, there is the following passage:

"Let the future appointments of judges be for four or six years, and renewable by the president and senate. This will bring their conduct, at regular periods, under revision and probation, and may keep them in

equipoise between the general and special governments. We have erred in this point by copying England, where certainly it is a good thing to have the judges independent of the king. But we have omitted to copy their caution also, which makes a judge removable on the address of both legislative houses, that there should be public functionaries independent of the nation, whatever may be their demerit, is a solecism in a republic, of the first order of absurdity and inconsistency."

Such is the language of the author of the declaration of independence. Whether these views were right or wrong, was a matter not of so much importance as bearing on the argument, as that they were the opinions of wise men, which the chairman had said was the best authority to which we could refer.

Having gone through the period of our colonial history, he came down to that of the revolution. The Constitution of 1776, he would say nothing about. He had already said something on that subject, which he had written and printed. He would, therefore, say no more on that. He would proceed to the Constitution of 1790, and he was ready to concede to the honorable chairman, without hesitation, that it was the sense of the framers of that Constitution of 1790, that the good behaviour tenure was the proper one. He conceded this point in the argument of the chairman without reserve. He conceded that the defence of this tenure in the 78th chapter of the Federalist was able; that the opinions of the men of that day were wise, and that the experiment of a seven years' tenure was a failure. On the other hand, he would ask the chairman to admit what he (Mr. I.) would now submit merely as a postulate—that what the statesmen of that day considered wise, and incorporated into the Constitution, was an experiment, altogether untried before that time. He had shewn a difference between this and the English Constitution. It was therefore an untried experiment; and all he now contended for was that this experiment has failed—that it has not succeeded. This state of the argument brought him to the analysis of the principle on which the whole of the opposite argument rests.

In computing the argument on the other side, it would, in the first place, be proper for him fairly to recapitulate the substance of that argument. It was of that character altogether which might be called a quiet title argument. Montesquieu was quoted by the chairman of the committee to show the danger of democracy, and the gentleman, from Union, (Mr. Merrill) took us all the way to Rome, and to France and England, in order to show that there was reason to apprehend danger from these concessions to the people, of which Dr. Johnson speaks. Now he would appeal to the candor of these gentlemen, and he would put in their mouths nothing which they did not say—he would appeal to every one to say if the whole argument of gentlemen when distilled, was anything more or less than distrust of the people.

I am not (said Mr. I.) speaking for popularity, nor to deprive any of these gentlemen of popularity; but, I am, endeavoring to address myself to this experienced and highly intelligent audience, so as to satisfy their reason. The whole of the argument, from begining to end, was distrust of the people. All that the gentleman from Union, (Mr. Merrill) said of Rome, with the exception of his pronunciation of the name of Darius, in which I differ with him—was true. It was all true. But put the

whole of the argument into an alembre and bring out the essence, and what would it amount to? I do not say it is not true. I do not say the gentlemen are not as good friends of the people as I am. I will do them that justice to believe they mean to be so. But the whole of their argument amounts to distrust of the people. All their argument goes to that.

Mr. Merrill explained. He had expressly disclaimed any distrust of the people, where they could act for themselves. But in trying cases he would prefer the calm and matured judgment of a competent bench.

Mr. Ingersoll said he was obliged to proceed in his course, step by step. The whole argument was distrust to the people. Napoleon had been called by one, a self-styled democrat, and by another, the democratic Napoleon. The cry of aristocrat was raised in his name, to put down the most able, virtuous and honorable men in France; and the cry of "no popery," was made the watch word of the mob which Lord George Gordon headed in England. He would not say gentlemen, in their doubts of their species, in their mistrust of mankind, were wrong. He would do full justice to their position before he proceeded to grapple with it. Their argument amounts to distrust of the people. We, (said Mr. I,) have none of that. We are disposed to trust the people. It is in vain to go into any argument in this matter. The chairman of the committee had solved the problem at once, when he said he was a federalist. None (said Mr. I.) respects more than I do the honorable and consistent course of that gentleman, but he knows the difference which has always existed between the political creed of his party and that of ours. I think the federalists as they once existed, a party highly educated, highly honorable and meritorious. The man from whose letters I have read, (Mr. Jefferson) was for trusting the people, while others, as wise, thought that the people ought not to be trusted too much. We thus agree to differ on this question. We have first had the question of conscience before us; and I have travelled through all the stages of conscience, trying to do what I could for those who advocate it, but they all voted against me. He did not wonder at this, after the giant controversy between the gentleman from Luzerne, (Mr. Woodword) and the gentleman from Allegheny, (Mr. Forward) in which both members were right and both wrong—because it was a question of conscience and there could be no reasoning about it. On such points man will not be persuaded. He will submit to be brought to the stake, beheaded, emboweled, rather than yield an inch. In matters of conscience there is nothing to be done by argument. And so it is in reference to points of honor, as we have had evidence in the discussion of the questionof duelling. Men will risk their lives on a point of honor. The gentleman from Adams, (Mr. Stevens) had told us we might make all the laws in the world, and they would have no effect, and if we add to them all the terrors of a future state, it was of no importance. Here is another of the great mysteries of our nature, which is not in the Constitution, and perhaps not much in the view of this Convention, is the principle of love. Can any man define or regulate it? Yet it has a powerful influence over us all, old and young. It is implanted in us by nature. So it is with politics. We belong to different sides, and must agree, as we always heretofore have agreed, to differ.

The argument resolves itself into a simple fact, and we cannot reason about it. We trust the people; they fear the people. This I do not say *ad captandum*. I meant it as a mere fact, and as explanatory of the whole matter. I hope that gentlemen will not consider me as doing them any injustice or arrogating any superior wisdom for our side of the question. All the arguments of Alexander Hamilton, Governeur Morris, and other distinguished champions of their views, may prove very true. I dont say that they will not be found to be right, and we lamentably wrong. But still such is the fact; we are disposed to trust more to the people than they are. We are for carrying out and carrying back the experiment of self-government; for carrying it back to the original Anglo Saxon principle, from which we have departed. I am for the English, the colonial tenure. I am of opinion,—notwithstanding the contrary doctrine of the framers of this Constitution,—and of one of them in particular who ought to have more weight with us than any motive,—that we might trust much more to the people without apprehending any danger. They may be right. I am not sure that it may not lead to anarchy and confusion as they predicted. But with some experience and observation in the course of a life not short, and with some stake in the community, I am for the establishment of the colonial system, the English system. I say that the Constitution of 1790, is a failure. What is the opinion—not of the people—I do not think now of them, but of this Convention on that Constitution? Have they not, by a vote nearly unanimous, attested it to be a failure? It is not the question now, what shall be done next? The vote of yesterday has put some, perhaps all of us, in a false position; but has not that vote said, this Constitution is not right, and the only question now is what it should be. I concede, first, that we are to demonstrate the infirmity and error of the system as it is; but it is nearly a self-evident fact, and it was ratified by the vote of yesterday, and by previous votes, that this instrument is imperfect. I concede, next, that, having shewn the infirmity of this Constitution, we are bound to shew the practical good which will be derived from the substitute we offer. I agree that we must substitute something better; something the benefit of which is not merely conjectural, but which will be apparent to every rational man; and, lastly, I agree that we are to shew what is the will of the people in regard to this matter—though, as they will have to pass the amendments in review, I do not so much care about that; all we have to do is to submit amendments to them, for their acceptance or rejection, and they exercise their judgment and pleasure in regard to them. We trust the people, and do not doubt nor fear them; and I sincerely believe that the voice of the people is the voice of the Deity, speaking through them. They may be subject to caprice and to excitement; but taking them in the mass, and generally, their opinion is to be taken in preference to that of any individual, however distinguished for wisdom and learning. Every lawyer knows this and acts upon it. What is common law? I call on the professional men here to say what it is. Is it not the voice of the common people? It is the law made by the mass,—and do not the lawyers appeal to it as better than their own wisdom. The opinions of mankind, in all common matters, is decisive with all lawyers; but when they come to high matters of government, it is no longer any common law to go by. They discard the opinions of the common people, and refer to judge this, and Mr. that,

to tell us what is right. But I have more faith in the opinions of the mass of mankind, in political as well as other matters. I hold all wisdom and book learning, as light in opposition to the sentiments of the mass. So do all. If a question were pending now before the learned judge from Philadelphia, (Mr. Hopkinson) to which the common law applied, and the principle of common law were clearly made out, he would disregard and repudiate any contrary opinion of Aristotle, Cicero, Locke, or even Washington, with contempt. This he would be obliged to do, and he does it every day. He assumes all that my argument begins and ends with, that the will and the opinion of the people are better as a guide, than the authority of any one man. The only question is what is the will of the people; it is difficult to get it, because the people do not, like individuals, reduce their will to writing. The learned judge has himself admitted that this will is sovereign—is the highest possible authority, when it can be ascertained. He said—and I believe I have the words—"no man is so mad as to set himself up against the will of his people, when it can be ascertained." What, sir, is all government, but relative good, and what is all government but relative evil. The longer I live the more I become convinced that the less we have of government, the better for us. I think it is a great misfortune that we are obliged to be governed at all, and the less we have of government the better off we are. What is all wisdom but foolishness. What has the Creator given us better than the wisdom of the common people? What is the wit of any one man in comparison with it? What is the wisdom of sages in comparison with that of the mass of the common people? What, in comparison with it is the value of all learning? The books are valueless in the comparison, excepting one book, and that is of Divine inspiration.

We differ in politics and in many things, and there is no reason why we should quarrel about it. Some are disposed to trust the people, and others not so much so, and there is an end of it. We have been admonished to be careful how we attempt to be more wise than those who have gone before us. There is a diversity of opinions and we cant help ourselves. But I will venture that a great many think as I do. It is very possible that we may all tumble over a precipice and that the learned judge and his friends will alone be safe,—but we cant help it. Our attention is called to certain standards, to which I must beg leave to demur—to Aristottle, Cicero, Bacon, Locke and Washington,—all of these great men. I have read with great attention and respect, every thing on the subject of government, that has came down to us from the sages of antiquity.

So much am I enamoured of Cicero, that I brought with me to this place the remnant of his treatise concerning a republic—that I might read it, and enjoy it, in the original. If the young gentlemen in this body, to whom I have referred heretofore, are not wiser in their generation than Aristotle, I cant agree with them What did Aristotle know of the divine lights which the author of our religion has shed over mankind? What did Cicero? Did either even dream of the representative principle of democracy, which is so well understood by our children at this day? They were acquainted with democracies, monarchies, and aristocracies, but what did they know of the representative system, as it exists here?

They never dreamed of it, in all their wisdom. I cannot be governed by the learning of Aristotle or Cicero, either as a christian, or as an American; neither of these learned persons ever knew any thing beyond the Straits of Gibralter. I have heard a lady, who is a friend of mine and of the learned judge, say that she would never forgive that vulgar fellow, Columbus, for discovering such a place as America, when there were so many more fashionble and pleasant countries in Europe. There were some politicians, too, who would be content with the wisdom of past ages. Aristotle never, in his wisdom, conceived the idea of a newspaper. The art of printing was unknown to him and to Cicero. They had had no glass to their houses; they never dreamt of a quadrant, or a mariner's compass; and if there was a Mrs. Aristotle,—as there was a Mrs. Cicero,—she never had a chemise to her back, nor a pin to her stomacher. Such things were then unknown, as shirts and pins, Asherin, with Pericles at her feet, had not the common convenience of pins for her clothes. We should lose all modern improvements in government and in the arts, if we stopped with Aristotle and Cicero. We are not sure that we are not carrying our principles too far. We may be altogether in the wrong. But, sir, we are disposed to go it—as they say—and we think that nothing is to be apprehended from it. If there is any one thing certain in the science of government—if we have learnt any thing from experience—then we think we must be right. I belong to a large class, sir,—call us radicals, low, poor, democrat, or what you will—but there is a large class of us—male and female, who go for improvement, and believe in steam, in gunpowder, in improvements in government. We believe, too, that over-government is the great error of mankind—and that self-government—suffering the people to govern themselves and to govern us, is the truest and safest principle. All this may be desired by the gentleman from Union, and by the learned gentleman from Philadelphia, and, I repeat, that it is of no use to argue the question with them. I will only state the fact. The learned chairman of the judiciary committee, told us, with great confidence in the truth of the position, that the man who submits to be instructed by the people is a slave.

Mr. Hopkinson explained. He had not made the remark in the connexion which the gentleman gave it. What he said was that the man who surrenders his own conscience and judgment to another, is a slave.

Mr. Ingersoll resumed—

Now he held in his hand the Constitution of the state of Michigan, and in the first article and twentieth section, he found these words: "The people shall have the right freely to assemble together, to consult for the common good, to *instruct* their representatives, and petition the Legislature for a redress of grievances." In this Constitution, therefore, which is the last one that has been adopted in the United States, except Arkansas, the right of instruction is embodied a right of the citizen, a right of man. Now he did not say that this was right—the learned judge thinks it is wrong and he (Mr. I.) was far from saying that that gentleman was wrong—all he said was that there was a division of opinion on this subject; and he called that gentleman's attention and the attention of the whole committee, to the fact that, all the old Constitutions of the New England states, without exception, contain a clause recognizing this right, as a sovereign and indisputable right. He did not say that this was right, but

he did say that there were matters on which the people of this country disagreed, a large number of them however, holding to it. It was in vain then to tell us what learned men believed in relation to this matter, it would have no effect. Whatever Aristotle or Cicero, thought on the subject, or whatever Locke or Bacon thought on the subject, could not effect us in the slightest degree. We are here in another age, and as we conceive, to other lights. We may be mistaken—but still we must go with the mass—we must go with the reformers of the day, and it is useless to resist it. The argument of the honorable chairman of the committee of the judiciary, is, that he goes by self confidence. The argument of those with whom he acted, was that they stood up for self-government. We think there is more intelligence in the body of the people, than in this body, in a court of justice, or in any individual that can be named. He wished to be understood as saying, also, that he believed that there was in the mass of the people more intelligence, more love of country, less selfishness, less vindictiveness, less bad feelings of any kind, and less original sin, if he might so speak, than in any chosen body of men, or in any chosen man, he cared not who he might be. He had no doubt too, but the youngest and least informed member of this Convention, had more practical experience and more political conversance with systems of government, and was better able to form a Constitution for a free government, than the best man of antiquity, or the wisest modern man, including Bacon and Locke, who has not lived within the last fifty years.

A new work had appeared in England—a reviewer of the works of Bacon in which he was more highly eulogized than he had ever been, yet he still held that that man did not know so much about the principles of a free government as we do. As to the works of Locke, he paid all proper respect to them, yet we all know that an attempt to introduce his principles of government into South Carolina, totally failed. It was our practical knowledge of government, which made us so much better judges of government than all these men, and he did not think that it was arrogance to take this to ourselves. He came now to speak of the principles on which this question is to be decided. To deal with great names was a delicate subject. The chairman of the committee, has thought proper, with that kind of eloquent eulogism which he is capable of delivering, to bring to bear on this Convention, the name of that man who has universally been acknowledged as the father of his country. He had said before that he thought that eloquence, emotion, or that sort of influence, was quite as much out of place here, as it would be to bring the name of Washington in the charge of a judge in a court. But he was not to be driven from his ground by names, or by the name of Washington even. He had seen that man in all his coporeal and all his intellectual majesty—upwards of six foot high and of a most commanding appearance. He recollected him now. He could see him plainly before him now, delivering his last address to the Congress of the United States, with a sword at his side, and a kind of European court dress on. Sir, the allusion to his personal appearance and his personal address, to his fellow citizens, which had been introduced by the chairman of the committee, was introduced for effect, but it had upon his mind precisely the opposite effect from that intended by the gentleman. The first secretary of General Washington—he was not now making any insidious com-

parisons, but dealing with facts—when he came to be his successor, instead of appearing before Congress with a sword at his side, and personally delivering his address, sent his messages to Congress in writing, and studiously avoided all those forms of address and appearance which his great predecessor must have deemed important, or he would not have adhered to them. Now he could speak of a fact, and one which he believed to be a fact, that if there were now sixteen hundred thousand voters in the United States, fourteen hundred thousand of them believed the first message of Thomas Jefferson, to be more consistent with the Constitution of the United States, than the speech of Washington. He spoke of the facts merely, and it was in vain to put them down. This revolution has been going on, popular supremacy had been gaining ground. He did not say whether it was right or wrong—he did not say whether he was for it or against it. It was no party question. But what he did say was that the great bulk and body of the American people are reformers. This was no party question. It was not a contest of the democratic party. He knew there was a contest between them and what was called the anti-democratic, as to who should be the true democracy, but that had nothing to do with this question, reform was going on and would go on, and it was in vain to talk to the people about checking it. As his friend from Philadelphia county had said, it will go on in spite, even of the name of Washington, if it is to be quoted against us. It was shown in ten thousand different results, and he would say that he was a madman who would set his voice up against it. It was not a party question, but it was a political question. It is a question in which the people must be the democracy, and the democracy the people ; but it is not a question of any political party of people.

The gentleman from Union, has asked how are we to ascertain the will of the people? Why, sir, how came we here? Was it not the people sent us here, and sent us here to make reforms, because the spirit of reform is abroad. If it had not been, we would not now have been here. Well we are here to make the proper amendments to our Constitution, and they are there to revise what we do, and it appeared to him to be a mere waste of time to be arguing upon such matters. Can there be a doubt on this subject of the judiciary, that it was not unsatisfactory to the people? He appealed to the quarrel of the speaker and house of representatives, with the Governor, to the Constitution of 1790, and the constant stream of petitions from that time, for a change, to the act of the legislature of 1836, and the election held by the people themselves, in support of it. What better proof can you want of the will of the people on this subject. The people are jealous of the enormous powers conferred upon the government by the Constitution of 1790. They are jealous of the power of the judiciary, because it is a power set up above and beyond them—a power which they cannot reach. The people choose to be master, we agreed that they should be masters; but when you come to look at it, it is only in theory. Then why not trust them in fact as well as in theory. That they were so, he appealed to those circumstances.

He should like any lawyer to tell whether we had any thing in the judiciary like a high court of chancery, a power which is without a jury, and can do almost any thing ; can prevent a man's leaving the coun-

try if it chooses. It happens that the Pennsylvania jealousy against such a power as this, has been such, that an enactment could never be got for the establishment of such a court, except a short time during the Colonial government, and then it was almost instantly repealed; and now it has been literally smuggled into our courts, at a short summer session of the Legislature, when no lawyer dreamed of it, or thought of it until he opened the books, and there he found that our supreme court was invested with the chancery powers. Well the people do not wish to give up this power, this controlling and supervising power which they have over their government. We concede it to them, all our proceedings show it. What was our vote on giving them the control over their justices of the peace? He believed it was three to one. What was our vote on yesterday? He admitted it was not conclusive, but it was indicative of what was to be expected. The fact was, that to him all this was conclusive of the will of the people, and he would leave this part of the subject with a short notice of the argument of the learned judge, which had been pressed beyond all reason. That gentleman, he knew was as conscientious and thoroughgoing a lover of his country—of this state of Pennsylvania, as any man here. He knew that that gentleman had always said that Pennsylvania stood first in the world—not only among her sister states, but in the world. If it was a prejudice he knew not—but he shared it with the gentleman. He would not live in Pennsylvania if he did not think so. But what made her so, but the sovereignty of the people, which had always prevailed more here than elsewhere. What made it so, but the universality of her right of suffrage and the sovereignty of her democracy—not party democracy, but the popular sovereignty of the Germans and wild Irish, if you please. The fact was that the common people had had more liberty in Pennsylvania, than elsewhere, and this was the cause of our prosperity. It was that the sovereignty here was more sovereign, and the universality of the sovereign, more universal. He perhaps might have some of that feeling about him which had been exhibited by others and which he hardly knew how to mention; that feeling in relation to others in Pennsylvania, being preferred to those who were born on our soil, but then all that must give way to the great principle which must be the result of all our labors, that is, to adopt that which will give the greatest happiness to the greatest numbers. That is the principle which we must all yield to. But this argument does not stop here. Pennsylvania was always a leading state in the United States of America, and always stood first in all those things, until a reform in the Constitution of New York, which still went farther in carrying out those principels of democracy, and until some of the new states, Ohio, and Indiana, held out greater inducements to the people to emigate thither; and then it was, and not till then, that Pennsylvania bagan to sink in the scale of great states. Then it was that the people left the soil of Pennsylvania, and took protection under more mild and congenial Constitutions, and then it was that Pennsylvania fell behind those states, and not till then.

The gentleman from the city of Philadelphia, who had addressed you so ably, had imputed our prosperity to the Constitution of 1790, and its superiority over all other Constitutions. Why this was not the case. Our prosperity was not constitutional. Our prosperity has not been altogether owing to our being well governed, because in many things, we have

been governed too much. Give us less government and more freedom, like those young and thriving states of the west; give every man those impulses and incentives to industry and enterprise, which a perfectly free government can give, and you will see Pennsylvania go far beyond any thing you have yet seen within her borders. It is true that we have gone beyond those states which have more aristocratic Constitutions than we have: but it is also true that those states which have more mild and democratic Constitutions, have gone far beyond us in prosperity and greatness. Give us then but sufficient liberty and we will take a new start, and far surpass our former greatness. As an illustration of his idea of this word liberty, he would read some extracts from a work which had lately appeared, which gave a very beautiful definition of this word.

I will now read a passage from an article published in a work to which I have before alluded—called "The U. S. Magazine and Democratic Review." It is from an article entitled "A Retrospective view of European politics."

"Liberty is nothing positive; it is but the absence of slavery. Liberty cannot, liberty will not establish any thing but itself; it cannot and will not destroy any thing but despotism. Liberty cannot change a people; it cannot give to a people qualities and virtues denied them by nature; it cannot cleanse them from faults which are born with them, or occasioned by climate, education, history, or ill-fate: Liberty, is in itself nothing, yet every thing, for it is THE HEALTH OF A PEOPLE. As the healthy beggar, with his stony crust of bread, is happier than the rich man at his luxurious banquet, so is a free people, were it to dwell in the icy regions of the north, without arts, without science, without hope, without a single enjoyment of life, and, wrestling with the bear for its food, happier still than a nation without liberty, though it should have inherited a paradise in its sky, and enjoy a thousand flowers and fruits, spontaneously produced by the soil, or offered by the cultivation of the arts and sciences. Liberty alone can develope all the powers and resources of a nation, in order to make her attain the end for which she was created. Liberty alone can ripen the hidden germs of a people's virtue, as indeed it reveals all its faults, showing which of them are to be ascribed to natural causes, and which to degeneration; separating thereby its healthy qualities from those which, under a semblance of vigor, conceal but weaknesses, or a morbid developement of a certain organ at the expense of all the rest."

Now, continued Mr. I. what has a judiciary to do? and what has our constitutional judiciary done in this respect?

The learned judge read to the committee from *Clarendon's** account of it, as he told us, one of the many instances that might be fetched from such histories, of Cromwell's contumelious treatment of a court of justice. I allude to the case of Coney. It were to be wished that, instead of such authority, that of a romance, as it may be called, composed in Holland, or in France, at a great distance from the scenes

NOTE.—"We suffer ourselves to be delighted by the keenness of Clarendon's observations, and by the sober majesty of his style, till we forget the oppressor and the bigot in the historian"—is the eloquent condemnation of *Judge* Hopkinson's authority, by a passage I never saw, till while correcting this sheet for publication.

described, seen through the medium of the most distorting animosity, the gentleman had favored us with even Cromwell's actions, as much more faithfully depicted in Godwin's excellent history of that abused but glorious English Commonwealth, which begat, at the same time, the founders of the English revolution of 1688, and of the American revolution of 1776. The time has come when the history of those days is better understood, and their giants less disparaged than they used to be by Clarendon, Hume, and all that class of tory fabricators of it. The gentleman behind me (Mr. Merrill) spoke of several similiar cases—of those of ship-money, of Penn's persecution, of the seven bishops, of Russell, of Sidney, &c. Now all these cases may be true, and I do not undertake to deny the judicial irregularities exhibited in these and in other instances of English wrong, any more than I should deny those of the decemvirs of Virginia, for which we were carried all the way to Rome to learn to dread responsible or popular magistrates. I demur, however, to the authority of Clarendon, or any such man, and I might cast a shade over the source of the authority.

But let us come, Mr. Chairman, at once to our own business, and bosoms in Pennsylvania, and I will, with a responsibility under which I tremble, select a few cases to shew the operation of this responsibility of the judicial tenure upon our own people.

In the first place, I refer to the case of Thomas Passmore, which has been called to our memory by the gentleman from Northampton, (Mr. Porter) which occurred many years ago. The judges in that case, notwithstanding a stretch of power so shocking to the sense of the community, passed honorably to their graves. *De mortius nil nisi bonum*, says the proverb, and I am disposed to say nothing but good. I have nothing to say but good; but I say there was one of those judges whom the legislature of Pennsylvania by a nearly, unanimous vote, called upon the Governor to remove, and whom the Governor did not remove, because he chose to construe the word "may" in the Constitution, as implying option on his part. I merely mention this, for the purpose of saying that the gentleman from Northampton, (Mr. Porter) may be right; but that, if he is so, the people are altogether wrong—for that case led to the passage of a law, which was adopted shortly afterwards,—and adopted, too, not only by the legislature of this State, but by the legislatures of several States, and also by the Congress of the United States, limiting the power of the court to commit for contempt. As in former instances throughout this argument, I content myself with stating facts, leaving conclusions to be drawn by others, without presuming to give any opinion of my own. I mention this case with no design to detract from the eulogy which has been bestowed upon the departed judges, by the gentleman from Northampton, (Mr. Porter) but simply with a view to shew, that unless the people are wrong, the judges are wrong.

Mr. Porter, of Northampton, begged leave to explain. He hoped that neither the gentleman from the county of Philadelphia, (Mr. Ingersoll) nor any other member of the committee had understood him, (Mr. P.) as saying, that he considered the judges, in the case referred to, right in the course they had pursued. He had never said so, and had never thought so. The position which he intended to lay down, in reference

to that especial case, was this—that notwithstanding the judges had been guilty of an error in judgment, he had never understood that any imputation had been cast on their integrity.

He must also take leave to correct the gentleman in another particular. He (Mr. I.) had stated as a fact which had been mentioned by him, (Mr. P.) that the judges had been tried and convicted. Mr. P. had made no such statement.

Mr. Ingersoll resumed. If I made such a statement as that, I did so under a mistake. I mention this fact, simply to shew the operation under the system. This is but one of many such facts. I consider them the infirmities of the system, and of those judges who minister under it. The system leads into temptation; it provokes indolence and insolence, cruelty and folly, and those who have been betrayed by it into the excesses, some of which I am calling to mind, are not to be deemed objects of my personal censure, while I am speaking of the working and vices of the system itself. The case I have cited is but one of many. The sense of the people of every part of the Union, has spoken out against such judicial excesses. It is now the law of nearly all the United States of America, and it is also the law of the Union, by an act of the Congress of the United States, that this stretch of judicial authority can not again take place. If the judges on the occasion referred to, were right, all that I have to say is, that the people have been wrong.

But, Mr. Chairman, I will allude to another case. The gentleman from Union, (Mr. Merrill) gave us, on yesterday, the case of Sidney. The gentleman read, as strongly appealing to our feelings against the dangers of a dependent judiciary, the detested letter which was found in Algernon Sidney's desk, and for which that person was condemned and executed; and he has also called on this body, with much emotion, to say whether such a paper ought to cost any man his life.

The gentleman from Luzerne, (Mr. Woodward) mentioned an act of despotic judicial impropriety, committed by one whom he called an English Jacobin—which, I suppose, he thought was a very hard word. I would not myself use any such terms. Judge Cooper was tried for his treatment of a boy in one of the courts of this state. If I am mistaken in the facts, let me stand corrected. Did not Judge Hopkinson defend him? If I mistake not, he did so; but Judge Cooper was indicted and tried (and I was myself present at the trial) for writing a paper quite as innocent, I believe, as that which caused Algernon Sidney to forfeit his life. The judge who tried him, labored hard for his conviction—he was impeached, and the maiden sword of Judge Hopkinson was fleshed, and triumphantly too, on that occasion.

We have been told of the case of Penn, and of some of the society of Friends having been committed for refusing to take off their hats in court. Mr. Chairman, does not one half of the audience now assembled in this hall know the fact, that one of the charges of which Judge Cooper was accused, was, that he sent a member of the society of Friends to jail, for not taking off his hat in court. Surely, this fact must be fresh in the recollection of very many who hear me. Sir, we need not go to such cases as those which have been cited from foreign countries—to Coney, Sidney, or Penn. We have plenty of such cases at home,

and occurring immediately under our own eyes. And I shall, before I leave this part of my subject, trouble the committee by a reference to a few more of them. I do not mean in what I say to implicate the character of any man; I am merely stating facts, with a view to demonstrate the practical operation of our judicial system as it now exists. Is it not a fact, also known to many gentlemen in this body, that, not long since, a judge in the western part of the state of Pennsylvania, struck a long list of the members of his court from its rolls, and stopped their livelihood for alleged misconduct, which the supreme court afterwards adjudged to be undeserving of such a severe infliction? This, however, is nothing to the fact which I am now about to mention. It is a fact that, not many years before, in another part of the state, two of the most respectable members of this Convention, were not only struck off the rolls, but were actually confined in prison for a considerable number of days, for an alleged contempt of court; and by means of a like abuse of judicial authority, not imputable, I repeat, so much to the judge, as to the system by which he was betrayed into it. This case happened in the east of the state of Pennsylvania, and the other in the west. There is one of the gentlemen now in my hearing, who will recollect all about the transaction well—the other gentleman is not now present.

These, Mr. Chairman, are only a few elegant extracts from the volume. I could cite them to you all the day long, if it were necessary so to do. The system, sir, has worked ill; it is inconsistent with the principles of a free government. The legislature of our state has done every thing which lay in its power to remedy the evils resulting from the sytem, but it has been all in vain. It is for *us*, here in Convention assembled, to correct the mischief. Our's is the task, and if we cannot accomplish it, the mischief will inevitably be perpetual.

This is all I have to say, Mr. Chairman, in relation to the workings of our judicial system, so far as it affects the personal liberty of our citizens. I come, in the next place, to the question of property. How has the system worked in reference to property? This is a very important branch of the inquiry, and is deserving of our serious consideration.

That property has not been well secured, I vouch the judicial vindications of the gentleman from Northampton, (Mr. Porter) and the gentleman from Beaver, (Mr. Dickey) who have both declared that so fluctuating were the decisions of the supreme court of this state, as to occasion great insecurity and inconvenience; and I vouch, with much greater assurance, than even the unquestionable assertions of those gentlemen, several acts of assembly to shew that it has been necessary to pass special laws for the correction of judicial errors. Every lawyer knows the fact to be so. Whether this state of, things arises from having too few, or too many judges, or from the tenure of their office being this or that, I do not undertake to say. All I state is the fact.

But, Mr. Chairman, what says the gentleman at the head of the judiciary committee, (Judge Hopkinson?) What was his defence of the judiciary in this respect? He said that this was a noble and venerable tree—that there might be some bad branches about it, but that we should not cut it down on that account, but rather leave it alone, and, in time, it would purify itself. He said that out of eighteen or twenty judges, he had never heard of more than four or five that were bad. According

therefore, to the learned gentleman's own statement, one fourth part of all the judges must be bad. This seems to be, Mr. Chairman, a good, broad concession. I do not ask much more. I thought he spoke of Philadelphia; but, take it which way he will, if four or five only are bad, it follows that one fourth or fifth of the number are bad.

Mr. Hopkinson rose to explain. He did not, he said, speak of that number of judges as being bad; but as being complained of, and that those complaints would be found generally to have their origin in some disappointed suitor.

Mr. Ingersoll resumed. I grant that such was the gentleman's argument. Now I hold the opinion that a good judge is never complained of. It is idle to say that, because men give offence in every cause to one side or the other, therefore, they must be complained of. I deny this doctrine of disappointed suitors, and vindictive lawyers, provoked by every judgment against them. Such, sir, is not the fact. In the course of my experience, I have never heard of it. I have never heard that the decisions of my friend Judge Hopkinson, caused complaints to be made against him. If such is the fact, it is new to me. I have never heard that such complaints were made against Chief Justice Tilghman, Washington, or Marshall. Sir, it is not so. It is a bad system which sometimes gives you bad men, or men who do not answer the just expectations of the public. And the people, in this manner, become dissatisfied. The judges, in their turn, become dissatisfied with the people—there is a spirit of mutual dissatisfaction and recrimination between them, and it goes on in this way to the end of the chapter.

My friend from the county of Philadelphia, (Mr. Brown) stated in his remarks this morning, that, at a recent date, there were eight hundred suits on the Allegheny docket, and he derived this information from a judge. The delegate from Allegheny interposed to correct the gentleman and to remove the effect of the statement, and he tells us now that there are very few cases remaining undetermined there, only about eight, I believe. To be sure, Mr. Chairman, we are in the midst of a revolution, and this is one of the merits of this Convention. We have been assured that, even when the moon has come more near the earth than she was wont, prodigies have been the consequence; and when the comet of Convention shakes its fiery tail, it would be very strange if some warmth were not imparted to the earth, and perhaps some uneasiness too. Still, if I am not mistaken, there *were eight hundred* causes remaining undetermined in the district I have referred to, at a date not very remote. There was a denial of justice. I am informed by the gentleman from Luzerne, on my right, (Mr. Woodward) that when Judge Mallory (upon whom the gentleman from Northampton, (Mr. Porter) has passed so eloquent a eulogy) entered upon the duties of his office, there were four hundred cases at issue, and untried, in a single county of his district: that is to say, the county of Berks.

Mr. Porter, of Northampton, rose to explain. He could only say that the court was fully up with its business, and that there had been no delay of justice in that district.

Mr. Ingersoll resumed. I repeat, Mr. Chairman, that there were four hundred cases at issue, and untried, in the county of Berks, when Judge Mallory undertook the office. I do not attribute infirmity or injus-

tice to any individual. I speak alone of the infirmities of the system. Do I give offence when I say this? I think I may say, that two, if not three years are the average duration of the few cases which come on for trial before the supreme court in the city of Philadelphia.

I have already adverted, Mr. Chairman, to the admissions which were made by the gentleman from Northampton, (Mr. Porter) and the gentleman from Beaver, (Mr. Dickey) in relation to the fluctuations in justice. I need not avouch the statements of those gentlemen, but I thank them for the argument. I will refer the gentlemen to the statute books. How many enactments are there on the statute books of the state of Pennsylvania, since the death of Chief Justice Tilghman, rectifying errors in the supreme court of the state, and saving the property of our citizens from the jeopardy into which it had been thrown by judicial mismanagement; as, for instance, in mortgages and other cases. Is this then fact, or not? Do I assert any thing which is not susceptible of the most ample confirmation? The Constitution of our state provides that the laws of the land shall be administered without denial or delay. Is it so, sir? I repeat, that I am not to be understood as impeaching the character or conduct of any individual, and I am most anxious that there should be no misapprehension of my argument in this particular. I repeat, Mr. Chairman, that I speak of the system. I believe the system to be wrong—essentially and radically wrong. I have no doubt that it is so. I believe—and of this fact also I have not the shadow of a doubt—that a large majority of the people of this Commonwealth, and that a large majority of the members of this Convention—and if we exclude professional gentlemen in this Convention—and if we exclude those who are influenced by professional gentlemen out of this Convention, I believe that a vast majority both of this Convention and of the people of the state, are fully impressed with the conviction, that they have to deal with an imperfect system which is beyond the power or control of the legislature, that they look to this Convention to change the organic law, and that it is our duty, if not our interest, to do so.

It has been said this morning by the gentleman from the county of Philadelphia, (Mr. Brown) and very truly remarked, that at a late session of the supreme court of the state of Pennsylvania, eight out of nine of the judgments brought before that court were reversed. Let me appeal to any lawyer in the state. Let me ask him what constitutes the principle business of the supreme court of Pennsylvania? Suppose these judges to be an expense to the Commonwealth, for the services they render, of $10,000 or $20,000 per annum. What has been their chief occupation since that time, when, most unfortunately for the system, as well as for their individual good, the judges got themselves relieved from the wholesome exercise of circuits? I do not mean bodily, but professional exercise, and settled down upon the tame functions of a court of reversion? What I ask are their principal labors? They are to reverse the judgments of other courts—to correct the errors of other courts. Of these judges the people do not and cannot complain, because there is no sufficient reason.

It is almost invidious, Mr. Chairman, to ask such a question, yet I trust that, as a mere matter of argument, no offence will be taken from it —what, let me inquire, what is the character of the judiciary of Penn-

sylvania, in the estimation of the other states of the union? What is the character of our abjudications, and what is the sale of our printed reports? Are they equal in character, as in sale, to those of other states? Are they not, on the contrary, known to be inferior? Do not the bench and the bar know this to be the fact, and do not the booksellers accounts of sales prove that they are not equal to those of other states? There is infirmity somewhere, Mr. Chairman, and I am willing to impute it to the system. Uncertainty of law is said to be the most miserable servitude!

After the security of liberty and property, I come, in the third place, Mr. Chairman, to speak of what I call constitutional instability. I will explain to the committee what I mean by this term. What said the venerable chairman of the judiciary committee? He said (and, in my view, the argument was almost as extreme as that of the father of the Convention, who I thought, was for destroying the judiciary altogether,) that there was no security for any thing unless you have some power, and what better power, he asked, could you have than the power of judges to declare laws to be unconstitutional? What political functions has the supreme court of Pennsylvania exercised, since the accession of the present chief justice? That gentleman, in a elaborate argument of self-denying efficacy, has repudiated, if I am not mistaken, the right of the court to pass on constitutional, or what are called political questions, which, from some cause or other, has not I believe been done during his presidency in that court. If it is never to be done, if the political power is abjured, and this is high authority for it, both philosophical and practical, then there is an end to the great reason most anxiously urged, for what some consider the independence, and others the inexpresibility of the judiciary, according to the chief justice then, there is no such power. Where is it? Does it exist? Is such a law to be found? If the chief judicial magistrate says, there is no such law where are we to look for it? Where are we to find an administration of it? Is it not a fact that, since the demise of Chief Justice Tilghman, there has not been a single revocation of an act of assembly, declaring it to be void on the ground that it was at variance with the provisions of the Constitution? This power then has been demised by the chief judicial magistrate of your state, it is in a sort of slumber—a kind of abeyance—it seems scarcely to have any existence at all.

Again, sir, the Constitution of the state declares that trial by jury shall be as heretofore—that the right shall remain inviolate. Is there any such thing as a trial by jury in Pennsylvania? It is a farce, it is absurd to talk about it. There *is* such a thing as trial by jury in England. I respect the sturdy, peaceable pugnacity of John Bull, who, whatever the judge may think proper to say, on matters of fact, speaks and decides for himself. Every one knows the manly independence of the English power—and with what respectful consideration an English judge regards the mystic might of the twelve empanneled laymen, to resolve all the intricasies of fact, all the continances of fraud, all the shades of character, and all the properties of guilt or innocence. This great popular right, so momentous even in its political consequences, as preserving popular reverence for the judiciary, which should never be impaired by the slightest instance, is every day trampled under foot, by short-sighted

judges, who feel power and forget right. The ungenerous contrast displayed throughout Pennsylvania, of implicit reverence by forces for whatever judges may declare to be the law, and the habitual encroachments of judges throughout the province of facts, is one of the most striking proofs of the imperfection of our system. Into this usurpation, as well as these which have been mentioned before, it is, the system that betrays the judge ; and nothing, I fear, will restore the right trial by jury, but greater responsibility of the judiciary to that community—from which jurors are taken. Another effect of this assumption by judges, of the trial of facts, as well as the law, has been such procrastination of our trials, that six weeks for one trial is not a very uncommon abuse —during all which protracted period, jurors are exposed to all those out of court, malign influences, which have been mentioned as dangerous to judges, and against which they ought sedulously to protect jurors by despatching the law, and leave the facts uncontrolled to those so much better constituted, and able and disposed to do them justice. With much deference, therefore, but as decidedly as possible, do I differ from the learned gentleman from Northampton, (Mr. Porter) who, if I understood him correctly, expressed the sentiment that the jury was less important than the judge in the administration of justice. I hold the very contrary to be the fact. The jury is the palladium of personal liberty, drawn into litigation, and for the most part as important on questions of property. A jury is much less liable to err than a court, and for obvious reasons. That they are so, is indubitably proved by the fact that, for one verdict set aside or even complained of, there are ten judgments. Therefore, the jury are right nine times out of ten oftener. And the gentleman from the county of Union, (Mr. Merrill) was correct when he said, that this very thing—this very right of trial by jury—was more than any other, the cause of the revolution of 1688. Let the gentleman from the county of Northampton, (Mr. Porter) answer this position, if he can answer it. The duties of the court and jury are distinct and separate. The courts are in the higher regions of learning, and of law. The jury, on the other hand, have only facts to deal with. They come to the trial of the cause with simple consciences, and minds like white paper; and it is a fact capable of easy demonstration, that for one verdict set aside for errors in point of fact, there are ten verdicts set aside for errors in point of law. If this be the fact, this trial by jury is most important, and it is our duty to take care of it, to nourish and to preserve it inviolate by all the means within our legitimate control. In due course of time, it is my intention to move something about this subject ; and I am the more anxious to do this, because I see constantly in our courts the most lamentable departure from what is right in relation to it —and a departure which, I am afraid, will shortly become habitual. This state of things is ascribable to the utter irresponsibility of the judges —who were so far beyond the station of English judges, that they are themselves bringing down that reverence for the judicial authority, which prevails in this country more than in any other nation of the world, and by arrogating to themselves the right to look to the result, and anxiety to get a verdict for a particular side—in short, to look to the facts, and to set themselves up as judges entitled to decide as well on what is fact as on what is law. I hardly know how to deal with cases of this kind. I could name many which are familiar to me. So indeed could every

lawyer mention numerous instances which occur in our courts of law. These things, Mr. Chairman, are not known elsewhere. They exist, I believe, only in the state of Pennsylvania. In the south, in the north, in England, and in every other part of the world, where there exists a proper regard to the rights and liberties of the citizens,—so far, at least, as my knowledge extends—these unauthorized and unlawful interferences with the peculiar duties of the jury, are not known. It is a vice—a judicial vice—imputable only to the judiciary of Pennsylvania. The evil is growing, and unless some measures are taken for its suppression, the most fearful consequences will follow. Of this I think no candid man who has paid due attention to the subject, can entertain a doubt.

I will mention one other fact, Mr. Chairman, and it is this—that this interfenence of the court in the facts of the case, leads to such long and lamentable delays, that the trial by jury is in fact a totally different thing here to what it is in England. The trial by jury in England rarely exceeds the space of two or three days; whilst here, in the state of Pennsylvania, a period of two or three weeks is quite common.

He had already mentioned the arbitrary and cruel treatment to which the judiciary had formerly been subject—of half a dozen judges being driven from the bench—of one judge being committed to prison, and the other turned out of office, both being men of the highest respectability, and one of them fast rising to the head of his profession. He had cited these cases for the purpose of showing that judges holding office under a tenure of this character could not be, and were not, truly independent. Party feelings, ought to be entirely laid aside, for a judge who was a partisan, was unfit to hold the office. And, this was the fault of the system. Now, what was the fact? Did not the Governor for the time being, appoint his judges from among those of his own political creed? Certainly he did, and this was the result of party sympathy. He (Mr. I.) did not complain of the executive, but of the system as it existed. Did he (Mr. Ingersoll) take liberties when he asserted that a large number, if not a majority of the inferior judges of the state, were partisans, open, avowed, writing, interfering, active partisans. He did not care, on which side they were, he spoke of the fact. Did he assert what was not true when he said that a large proportion of the inferior judiciary were partisans, and that not a few of the superior, were party candidates? And, was it not a fact that the second officer of the Commonwealth, who bore a high character for rectitude and honesty, and who had filled his judicial station, to the satisfaction of the people, had been a party candidate? Was there not, also, (and he spoke from recollection,) a judge of the United States, who was a candidate for the office of chief magistrate of New York? If then, this was not interfering with politics, he knew not what was meant by that word. He knew not neither what was meant by "party," if this did not look like "party."

On motion of Mr. Brown (Mr. Ingersoll having yielded the floor,) the committee then rose and reported progress; and,

The Convention adjourned.

THURSDAY MORNING, November 2, 1837.

Mr. Fleming, of Lycoming, moved the second reading and consideration of the following resolution, offered by him yesterday, viz:

Resolved, That this Convention will adjourn on the 30th instant, to meet in the city of Philadelphia on Monday, the 4th day of December next.

The question being put, the motion was disagreed to.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'Sherry in the chair, on the report of the committee to whom was referred the fifth article of the Constitution.

The question pending being on the amendment moved by Mr. Woodward, as amended on motion of Mr. Dickey,

Mr. Ingersoll resumed his remarks. He came now to take a view of the party results of the present judiciary system. The judges are not to be called to account, at any time, for any misdeeds. They were secure under the protection of their commissions, which, however, cannot change the nature of the men, but leaves them just where they find them, subject to the inseparable infirmities of their kind—ambition, avarice, love of ease, and all the other evils enumerated by the chairman of the committee; to which he would add, that if they did dabble in politics, that also ought to be added to the catalogue of their offences. He could add this fact, that, among all parties, our greatest, most officious, and thorough-going politicians are the subordinate judges; and that, among the superior judges, are to be found our most conspicuous candidates for political offices. He would refer gentlemen to the instance of the first Chief Justice of this Comwonwealth, who became the Executive; and to that of one of the judges of the United States supreme court, who became a candidate for the situation of Governor of New York. There was also a judge of the supreme court of the United States, who became a candidate for the office of President of the United States. He might add to the catalogue, and he hoped without giving any personal offence, that he had seen the venerable chairman himself, (Mr. Hopkinson) put in nomination, by some of the newspapers, for that high station.

That judicial tree, then, which the honorable gentleman described as sound, and exhibiting a healthy stem, and as having only a few rotten branches, which would fall off, in time, if only left to themselves, he (Mr. I.) would not say bore little else than rotten branches—that would be wrong, and he wished to speak within the strict bounds of truth—but had long been rotten and broken down by the overbearing quantity of its impure fruit. The present system was a bad one: the temptations it held out were so great that none less than a second Washington was able to withstand them. Nothing but an organic

change could purify it. The tree was overladen with bad fruit; he could name instances; they would flash on every recollection. Every Governor had his friends, and judicial offices were the rewards apportioned among them.

Here Mr. I. made reference to the appointment by the Governor, of two leading editors of the strongest party papers, to judicial offices, in Philadelphia. One of these had gone to his account; the other was still living, and he did not desire to speak in the spirit of detraction, when he said the merits of both were partisan merits; and, but for these, they would have had none. He selected these as known and remarkable instances. He might add appointments without number. It was extremely painful to advert to an instance, which would be in every man's mind, where the Governor appointed a judge, not an inferior, but a president judge—(he, Mr. I., could not allude to the fact without pain, for they had been fellow students, and he had gone to his account,) —who had fallen into deplorably bad habits, and all attempts to remove him were frustrated. There are members of this Convention, who were members of the legislature at that time, and who are cognizant of the facts. This was not a singular case; such cases, he regretted to say, were common.

This tree is rotten at the root; it is rotting upwards, as trees frequently do. He had recently been obliged to cut down a noble tree on his own farm. He was told he might as well cut it down, as it was rotting itself off. So he would apply the axe to the root of this judicial tree; he would be glad to restore it to its wholesome condition; but that was not possible.

Political judges, Mr. Chairman! Why, with all the pains of *scandalum magnatum* staring me in my face, I am in duty bound to say, that judges might be mentioned who do nothing else than attend to political business. Instead of settling disputed cases, they are regulating tavern licenses, and disposing of auditorships, and giving their whole time to party objects; as if their place were given them only for that purpose. He believed he might name a court which was created merely for party purposes, and which is constantly exercising itself in party operations; whose whole business it is, by giving a tavern license to one, and taking one away from another, to manage and control the county, as to keep its party in power. This statement was founded on truth; and he told the circumstance, not only in all sincerity, but in all sorrow. It was truer than a great deal of history.

The honorable chairman had referred to a circumstance, which he (Mr. I.) said had much surprised him. He has read a clause from the Constitution of the state of Massachusetts, with great emphasis, to sustain his views concerning the judiciary. The chairman pronounced an eulogium on that Constitution, (said Mr. I.) to which I entirely subscribe. But he must have known this principle is not ours. With that peculiar simplicity and integrity of purpose, so characteristic of the honorable chairman, he always goes straight to his object, without permitting himself to stop and consider that others might think differently from himself. With all respect for that Constitution, and for the great names which give it weight, Story, Webster, and the elder Adams, for all of which, and all of whom, he entertained the sincerest respect, does

not the gentleman know that we belong to a different school; that our rudiments are different; that we cannot agree in this point; but that there is a gulf—a broad line of demarcation, between us? We worship at a different shrine. Their's may be the true one, and we may be in error. But till we are brought to see and repent of this error; the arguments which are brought forward under the authority of great names, are of no effect with us. And though the gentleman deems the opinions which sustain his views, to be those of the wise and learned; they are not the wise and learned to whom we look for our authority?

The learned judge has particularized, in rather glowing colours, the dark passions, ambition, avarice, love of pleasure, which had defaced the system, and thought that nothing but salary and tenure could make the judges do right; that there was no sense of honor, no fear of future liability, which could be operative upon them; in which the learned judge has gone farther than I can go. I am in favor of making their accountability more operative; so that no man, no court, shall feel itself raised above the reach of responsibility.

He (M. I.) would now call attention to a very memorable case. In the early part of the war of 1812, when the country, (to use a phrase of Mr. Madison's,) in reference to constitutional constructions, was "stiffly divided on certain points," there was a strong difference of opinion abroad on the subject of sending the militia out of their own state; and this question begot another question—whether the President had a right, under the Constitution, to call out the militia; and if he had, whether it must not be done through the Executive of the State. Gentlemen will all recollect the stand made by Governor Strong against the requisition of the President of the United States. The case went to the supreme court of Massachusetts. The Chief Justice, Parsons, who was a man of unquestionable talent, of the highest order, and as pure as he was eminent, did not hesitate a moment to decide that the Governor was right in refusing to obey the requisition; that the President of the United States was wrong in calling out the militia, and that Mr. Madison's notions were all wrong. The chief justice scattered all of Mr. Madison's ideas about national obligation, in the air, and revoked his order.

And what led to the change in the Constitution of New York? The judiciary had been administered by Kent and Spencer. They were also members of the council of revision. These two judges gave umbrage by endeavoring to stop the progress of the the war, and thus brought about the change in the Constitution of New York, which operated, unfortunately, in getting these two able judges from the bench; but, fortunately, in ridding the state of the council of revision. No man is beyond the influence of party feelings. In a few years, one of these judges was mentioned by a southern paper as a fit person for President of the United States, because he had written something on the slave question. For this he was recommended as worthy to be selected from all others, and elected to that high office, where (said Mr. I.) I would have been happy to have seen him.

It is in vain, then, to suppose you make a vestal virgin, when you create a judge. You cannot do it. It is the greatest effort and duty of life to be born anew. You can't make a new man by merely placing a judge behind the battery of a salary; he must be purified by other cir-

cumstances; and after all, he will neither be a vestal, nor superhuman. This life tenure, on the contrary, has a tendency, in every instance, to evil. It is productive of indolence, insolence, and an aggravated spirit of tyranny. It takes a man, in his own apprehension, beyond the sovereign power of the people. and separates him so far from other men, and enables him to break down that part of the judiciary which is worth all the other parts of the system, ten times over—I mean the jury. If the tendency of the higher judiciary has been to break down the lower,—I mean the jury,—then, by doing what we have done by the Constitution of 1790, to secure the independence of the judiciary, we have lost infinitely by the change.

The tendency of these life offices is all bad. The infirmities of our nature are too strong to be left without restraint. Such a man as William Tilghman, was a happy accident. I always understood the President's signature was affixed to a commission for another for that office which is now filled by the venerable judge near me; which, if not changed, would have been a great loss to suitors and citizens. There may be happy accidents, although we may view it as a solecism, contrary to reason, as Dr. Johnson says.

The judicial, is a life office. Why is it such a life office? The venerable judge, and the gentleman from Union, (Mr. Merrill) have said it is not a life office. Why is it not? Because it is not called so in the Constitution? The framers have called it so by circumlocution. Is a slave a slave or not? The word slave is not mentioned in the United States Constitution, yet it is expressed by a gentle circumlocution: but the *thing* slave is there, as the *thing* life office is here: to the great disgrace of this Union, the disparagement of the American character, and the discredit of American institutions, the *name* is not there, but the *thing* is there.

Life office, in our Constitution, is as much a cancer there, as the slave principle is in the federal Constitution.

Such is some of the evidence of the impurity and weakness of our system. I know how much of your patience I draw upon, yet how superficially I have touched the subject; my course being more of the narrative of an old man, than of an argument.

He (Mr. I.) would now proceed to disabuse the minds of the candid part—and that he believed to be the greater part of the Convention, who had come here, like himself, wedded to no result. And he would proceed to say a word or two on the alleged merits of the system. On his notes he had the names of three judges, which he would not mention—two of them were dead, and one was now living—there was a period within five years when a president judge of the Commonwealth, judge of the supreme court and a judge of the United States, held their offices while utterly incapacitated, against every effort to remove them. One of these judges was of notoriously depraved and bad habits; the second suffered from the alienation of his mind, and in this state, he was wholly unfit to fulfil the duties of his station; the third, a judge of the supreme court ofthe United States, was superanuated, and although a man of strict honor, was totally deaf. In every instance, there was no relief to be had. The cases were remediless. There was no constitutional—no possible

remedy, but lynch law, and that had not then come into being. There was also a time when two judges sat at the same time in the southern district of New York, and congress was obliged to enable the President to appoint another judge to sit side by side with them.

He (Mr. I.) was chairman of the committee on the judiciary in the house of representatives at that time. There was also the case of Judge Peck, of whom he did not desire to say any thing disrespectful, as he knew so little of him as scarcely to remember his name, who could not be got rid of, although he passed through the formality of an impeachment. The system which thus secures judges in their offices against the voice of public opinion, could not be wise. He would proceed now to disabuse that part of the house unlearned in the law—the laymen of the house: and he had as much respect for their capacity, integrity and attainments, as for any other. The gentleman from Northampton (Mr. Porter) had exclaimed: protect us from the curse of an unlearned judiciary—and the chairman of the committee had called our attention to the law library up stairs—which he (Mr. I.) admitted was not what it ought to be, as there were larger collections in the hands of some individuals—and had called on us to consider the length of days necessary for a judge to perfect himself in the knowledge of his duties. Yet, Buller, perhaps the best English judge of his day, Chancellor Kent, and Judge Story, all became judges, at an age too early, and in circumstances too slender, to admit of their having studied, much less owned, extensive libraries of books. The present chief justice of Pennsylvania, was also placed upon the bench, at a very early period of life, and it is hardly possible, that either his leisure, or his salary, since, have enabled him to read or to buy a great number of books. I hope I am not an enemy to learning, but I shall venture to say, on this occasion, that probably one third of the books, in a law library, are technical treatises, concerning those abstruse sciences, which the good sense of mankind, and the labors of legislation have been, for many centuries, struggling to overcome the habitual attachment of lawyers to; while another third of the same library is composed of modern English works, which a law of this state (unwisely, as I conceive, repealed of late,) for a long time interdicted the use of in our courts of justice. Let me fortify myself in this perilous assertion, by vouching a very able tract, lately published by Judge Baldwin, in which he complains, with no less regret than reason, of the extreme injury done to the Constitution of the United States, by the construction of judges, relying on recent English law books for their learning. Within a very short period, the supreme court of Pennsylvania have solemnly recognized the obligation as well as the wisdom of those short pleadings which Penn prescribed, at the foundation of this state; and there is some reason to hope, that the technicalities, fictions, and complicated processes, which constitute so much of what is said to be the necessary learning of the law, are falling into disrepute, both here and in England. The chief justice of Pennsylvania, who preceded Mr. Chew, not long before the revolution, was a Mr. Allen, a merchant of Philadelphia; and I have heard the now senior surviving member of the bar of Pennsylvania, a gentleman of great learning, whose reputation is not confined to this country, and will be historical, say that the commercial law of this state was never better administered, than by Chief Justice Allen.

The much decried arbitration system of Pennsylvania, with a superin-

tending judiciary to regulate it, has been, in my humble opinion, of much benefit to the community. Liberty, property and character, are all safe under the justice administered by arbitrators, and the objection—I appeal to lawyers for the fact—that is mostly made to an arbitrator, is, that he is not fresh from the ranks of the people. An arbitrator long or much employed as such, what is called *a patent* arbitrator, is mostly objectionable. He has learned the tricks of the trade, and not only suitors, but lawyers prefer a man who has not had too much experience.

All the objections that were so eloquently urged by the venerable chairman of the judiciary committee to short or responsible tenure of judicial authority, apply with much greater force to the arbitrator, juror and justice of the peace, than to the members of the higher judiciary. If the press, the people, corruption, intimidation, or any other extraneous malign influences are to be apprehended, they are at least as formidable to the lower or popular branches of the administration of justice as to the higher. Nor must it ever be lost sight of, that nine-tenths of the litigation and controversy of the community are adjusted in these lower forums. The federal court for this district, in which Judges Baldwin and Hopkinson preside, determines but very few controversies in the course of a year; they may not settle ten disputes annually, yet they settle enough to serve as guides and landmarks by which a thousand may be settled in that way in which the great mass of disputes are conciliated, and the same thing may be said of all the superior courts compared with the vast mass of suits disposed of by inferior magistrates.

We are told almost perpetually, and told at all events with great apparent, if not real earnestness by the learned judge (Mr. Hopkinson)—and by a gentleman behind me (Mr. Merrill) of the influences used and the threats made by demagogues. Why is the jury liable to all this? Is there any difference between the judge and the jury? Yes, there is a difference, and that is the jury is ten thousand times more liable to these things than is a judge. And, according to our present corrupt and miserable way of trying causes, what is really only the business of a day, takes a week; and during all this time the jury is subject to every species of corruption. We have heard of tavern demagogues, and people who attend town meetings, mixing with them. What do the poor jurors do? They go day after day to the court house to attend the trial of a cause which, perhaps, may have been going on for four or five weeks. This may be a strong phrase; however, it is not an uncommon thing. It is too long. What is to become of the poor juror all this time? Is there no press to work upon him? No demagogue to play upon him? No tavern in the neighborhood where he can while away his spare time? Yes, all these things are reserved for him. This doctrine of the necessity of a long tenure in order to procure men of learning on the bench—to prevent undue influence—to make them irresponsible, in fact, is, in my humble opinion, altogether a misapprehension, and ought not to be entertained. I must, sir, be excused again for saying, as I have said before, that this is an *argumentum ad hominem*—to the learned judge (Mr. Hopkinson.) I studied under him; I look at him with admiration; and never was there a bolder judge than he was when he held his office at the period when a new President came in, and the senate were of the same principles. I repeat it, there never was a bolder and a better

judge than he was during the seven or ten months that he held under a commission before he was appointed under the confirmation of an Executive coming in upon antagonistical politics. It is neither the tenure nor the salary that makes a judge act with independence. I do not mean to say that their tenure should be broken down, as the New York Constitution proposes it should be in reference to the judges of that state—that is, by putting the names of all the judges on the bench into a box, and drawing them out and appointing them accordingly. Now, this scheme may be very well fifty years hence, but at present we are not ripe enough for it. But, to a certain extent, I do hold that the tenure, as it now stands is injurious to the judges themselves as well as the public. And, I do deny that it contributes either to the independence or the learning of the judges, to the extent which has been imputed. My friend from Philadelphia county, (Mr. Brown) yesterday spoke of the temporary courts in the city and county of Philadelphia. He has been led, suffer me to say, into a great mistake on that subject, which I will take this occasion of correcting. It will be recollected that the gentleman who now sits before me, who preceded me in his speech, said that while it had been difficult to get an act of assembly passed lengthening the period of the official term of the district courts, yet that he had been given to understand that that prolongation of the term had been to improve those courts. I deny it, sir. I think it is very probable that he got his information from one of the president judges. Sir, I must be excused for saying—for I have special reasons for saying—that the profession now exhibits many instances of unfitness for office. I would say, sir, there were much better judges when the term was three years than when it was ten years. That is a fact. I speak without comparison; I speak of the fact as it is. Let it be denied, if it can be. Sir, it cannot be. I do not mean to speak—and let me not be misunderstood on this tender ground—for it is tender in more instances than one to me. I do not mean to speak with disparagement of those that be. But, it is not true that those that be are equal to those that were—for those that were appointed for three years, were at the head of their profession; while those that held for ten years were never heard of in their profession. Sir, this subject of tenure is susceptible of an infinite variety of illustration, which I have now neither time nor strength to go into. But, I will submit one or two remarks—I have spoken of the English chancellor and the master of the rolls, as not being officers dependent on the popular will, but on the breath of party influence—who go as much for the party, as any one associated with it—who never fail to go out as the party goes out and comes in. There is another influence in England, and let me be corrected by learned lawyers here if I am wrong. A vast deal of circuit business is done in England. The trial of causes is performed by what are there called sergeants—lawyers commissioned *pro hac vice*. Sergeant A. is commissioned to try causes on that circuit, and sergeant B. on this circuit, for this year, and so on. What the compensation is that they receive for their services, I do not know. There is the chief justice of Chester and the chief justice of Wales, who are both members of the bar. There are various officers of that kind, who are members of the bar. I do not know the period for which they hold their offices. I believe, however, that they are mere commissioners, acting under the superintendence of a judge. Now, in regard to our own judges, every body knows that the liberty

and character and independence of all are as safe in the hands of our judges, as if they were appointed officers for life.

Let me, sir, call the attention of the Convention, to another subject matter connected with our own judiciary, of a character a little amphibious, because it comprehends the executive as well as the judicial branch. In the states of Pennsylvania, New York and Massachusetts, commissioners have been appointed, wisely, as I conceive, to revise and digest the laws of each state. And, eminent and distinguished lawyers were chosen to perform the arduous work on behalf of this Commonwealth. I speak every thing under correction. These gentleman have been appointed annually; whether they were put in by name in the act of assembly, or were appointed by the Governor, I cannot say. It is immaterial, however, so far as my argument is concerned. In every instance, to the best of my knowledge, and I can speak for New York and Pennsylvania, especially—the best legal talent and experience, without reference to party, have been selected to prosecute the undertaking. The late Mr. Rawle, a man of most excellent character, Mr. Martin, Mr. President Jones, of this state; Mr. ———, Mr. Butler, and I think Chancellor Kent, composed a part of the commission. These bugbears, which are so often held up to frighten us, are after all but bugbears. There is not that reason to doubt the success of the experiment, that I acknowledge we are about to make, as some may imagine. Next, as to the salaries of the judges: Let me say a word to my friend from Northampton, (Mr. Porter) who has proposed to reduce the salary of the chief justice $200 per annum. I never would have reduced it $200. The salaries were reduced shortly after the government went into operation, and they had not been increased since. An addition has been made to their travelling expenses, and that is all. There is now a form on our tables, proposing to make the salary and per diem allowance of the judges $2400. I have more faith in the system than the tenure, and I do think that an adequate salary should be allowed to every judge. I agree, too, that some organic change is required. Four thousand dollars I named in my system, and on which I was desirous of taking a vote before we adjourned at the last session. The delegate from Beaver, (Mr. Dickey) seemed to think it an extravagant sum, although I proposed to add but two or three hundred dollars to their salaries, while my friend from Northampton, (Mr. Porter) in a spirit of tyrannical reform, I cannot tolerate, talked of reducing the salaries one, two, or three hundred dollars.

Mr. Porter: I beg to correct the gentleman. I was not for reducing the salaries of any of the judges, but for prohibiting the Legislature from cutting them down below a certain sum. They propose to cut down the per diem allowance, while I propose not to reduce.

Mr. Ingersoll: Still my argument is not answered. He fixes it at two hundred dollars below what it is now.

Mr. Porter: It should not be less than that.

Mr. Ingersoll: Perhaps, then, we are disputing without a difference. I am for adding to the per diem. With regard to the subject of salaries, I have a word or two to say. We are a great deal indebted—we owe a debt that we can never repay, to our English friends. And, what we owe to Milton's magnificent poetry, which I have always regarded as infinitely

less valuable than the great republican principles which are breathed throughout his prose; what we owe to Shakspeare's extraordinary genius; what we owe to Bacon's learning; what we owe to Locke's philosophy—is as nothing to what we owe to the profound legal learning of Coke, of Hale, of Littleton, and many others, who laid the foundations of our law, and fixed the value of titles. This is an inheritance which we never can repay. And, sir, suffer me to say, that these monuments were founded by men who were very differently situated from ourselves—who were subject to the caprices of an arbitrary monarch—who were liable to the caprices of a Plantagenet king, who knew nothing, and cared less, about personal liberty—men, who were liable, like Hale, to be the mere tenant at will one day of a hypocrite, whatever the historian Hume may say to the contrary, of Charles I. Men were liable to his caprice, though perhaps they had been his idolitors, and still were obliged to bear allegiance to him. These men, sir, were compelled to swear allegiance to that democrat, as he was called, Oliver Cromwell, in whose hands was the property and the liberty of the people; and these judges held their offices subject to his will. Sir, I have made it my business to look into the salaries of the judges in England. I think that no one who looks into the subject, and into the manner in which the law was, and has been administered, down to a very late period, but what will be convinced that it was formerly better administered than at present, and that the salaries were then very small. It is, sir, only within a few years past, that they have become so large—as late as the days of Holt. Ay, even later than his time. Pope, in those days, said of two distinguished judges:

"As Willmot wise, and as old Foster just."

As late as those days, Blackstone, Willmot, and all the other judges administered justice for very small salaries. It was not until the days of Eldon, that salaries were raised. And, in this country, poor as a judge generally is, I cannot support any idea that a judge should not be put beyond the caprices of the legislature. I could name, sir, an individual, the non-appointment of whom to the chief justiceship of this state, is the great cause of our being assembled here. Sir, I have stated this fact out of doors, and I will not be deterred from repeating it on this floor. I know the name of the individual who was the proximate cause of bringing about this Convention. I would vouch for it, that the individual to whom I have alluded, would, with pleasure, take upon himself to discharge all the duties belonging to the office of chief justice, and would perform them with honor to himself, and benefit to the community, and that, too, without receiving a cent of compensation. Sir, I could name one or two more men, who would as gladly bid for the chief justiceship, as Washington did for the command of the army, and who would be proud of, and feel honored by, performing the duties of that important and dignified station.

Finally, in this review of the question of tenure, as it connects itself with the independence of the judiciary and the salary of officers. I come now to the justices of the peace. The chairman of the committee on the judiciary committee, has taken more pains than it appears to me it was necessary for him to do, to discriminate between these and the other members of the judiciary. The facts are enough for me, whatever the opinion of the committee might have been, and they are to be decided by

a vote of this committee, which is irresistible, I suppose. I shall vote in the minority. I, sir, shall be purely democratic, and I shall probably be overruled by a majority of 60 to 20. It is in vain to deny the fact, that that portion of the judiciary comes more home to the bosom of men, which proposes to make the judges eligible for short terms and low salaries, instead of being appointed during good behaviour. Has your attention been called to the paper from the secretary of the commonwealth, setting forth the amount of the fees received by the justices of the peace? It appears that the fees amount to $167,300 per annum. We may take it at $170,000, as the cost of administering this little justice. This, sir, is a standard by which to judge of the immense importance of the subject. The militia system, as we are told, costs us $——— a year. Here, then, is a part only of the administration of justice, costing us $170,000. Are these justices liable to the influences to which it is said they are? Is there any tavern influence, or town influence, or malign influence that can reach them? Are they not more accessible than those who receive higher salaries? There can be no doubt of it. But, sir, does my friend from Northampton, (Mr. Porter) protect his unlearned judiciary—protect the multitudinous number of justices of the peace that we have? The gentleman has referred to the fact of twenty justices of the peace having been seen sitting together on the bench, at one time, in the state of New Jersey. I will refer the gentleman to Griffith's Law Register, for a just eulogium on that system. I will recall to the gentleman's recollection, the fact, that President Monroe was re-elected with one dissenting vote only; and that after he retired from office, he became a justice of the peace, and was to be seen daily setting on the bench, where he would administer justice cheaply, and was justly admired. I will refer the gentleman from Northampton, and the committee at large, to one of the first vetoes of Governor M'Kean on this system. The misfortune, sir, is, that an attempt is now being made, in this country, to get up a middle class, or what is called in Europe, a shopocracy—in England, shopkeepers, a provision we do not require. In that admirable veto of Governor M'Kean, my friend from Northampton will find an excellent argument against the present system. It was on that argument I predicate my plan, which I submitted a few weeks ago, and on which I shall ask a vote at the proper time.

If much of the business that is now done by the inferior magistracy, were done by the superior, the administraiion of justice would be more harmonious. What, sir, has covered your state with so many presidents? Was it done for the people? No, not at all, it was done for the lawyers. Sir, I will answer for it, without looking at the record, that it was introduced for the benefit of the bar; to make judges who would be convenient for the lawyers, and, under the plea and pretext of bringing justice to every man's door—to every lawyer's neighborhood. This tendency to belittlement is termed a great evil. Let us have a dignified, well selected, and at the same time, well paid supervisory magistracy. But, with respect to these middle men, I believe the framers of the Constitution were to be deprecated for introducing them. I am very much mistaken if James Wilson, (whose name is the first appended to the Constitution of 1790,) and Thomas M'Kean, were now alive, they would not lead here—if they would not lead us back to what they desired—to a better and more popular system. I would not speak, sir, with disparage-

ment of any member of the profession on the bench, or at the bar. I have no wish but for their honor and their advancement, and their being put forward. But, I believe that they, and all of us have suffered by the present system. I believe, sir, that if the Convention, under any combination of circumstances, should adjourn without remedying the existing evil, relief will be obtained by means less advantageous. There will be an amendatory clause incorporated in the Constitution, therefore, whatever we may do, cannot be very injurious or pernicious. It cannot last so long as to operate upon, and overturn the Commonwealth. And, I do assure you, sir, that one of the fond fancies I have, was the placing at the head of the judiciary, one of the individuals to whom I alluded, who I thought might repair the broken foundations of the Constitution—who might restore that reverence for it which the people once entertained—who might bring us back to that state of things which once did exist, and which I am free to acknowledge, is not as bad now as it was a few years ago. Why? Because the very indication—the very approximation of this comet—of this Convention to the judiciary has had a purifying effect. And, sir, the argument in that respect is profitable, as it goes to shew that if you will place the judges within the verge of responsibility, such an arrangement will be perfectly satisfactory to the people. With regard to the subject of salaries, I must say one word more, in conclusion. As to the case of Judge Drake, I declare that I never heard of it before. I know nothing in regard to him. I don't wish to speak disrespectfully—but I know nothing of his case. If the operation of a great constitutional provision drives a judge from office, what objection can we offer to it? Do we, sir, sit here to give alms? I believe with Mr. Madison, that the people of this country are not to be frightened into the English pension system at present. Mr. Lowndes said that the pension system, as adopted in England, would prevent improper persons from obtaining pensions. There is not the same danger of abuse there as in this country. I, however, do not expect to see the day when the system will be tolerated; nor do I think that my great grand children will. I agree with Mr. Madison, that there is not so much danger in the English pension system, as in our own. But, how can we help it?

What is the fact in regard to Chancellor Kent? He had made, since he left his office, as he told me himself,—and I hope I trespass upon no propriety in mentioning it,—twice or three times as much as the amount of his yearly salary as a judge. A life tenure, is calculated to make the best man—even such a man as Chancellor Kent—a lazy fellow. But a man with health and industry combined, will be constantly improving his faculties, and cannot be destroyed. If he is removed from the bench, he will only be removed, like Chancellor Kent, to a sphere of higher and more extensive usefulness.

With respect to the New Jersey case, it has been well met by the gentleman from Luzerne, (Mr. Woodward.) I know Judge Ewing well—and was at college with him—though he was in the class before me—I regard the case with which his name has been connected, as one of those spasmodic cases which cannot be anticipated or guarded against. We know, from what we witnessed here, the other day, when a dispute arose about a matter of convenience, that this sort of feeling cannot be reasoned with nor dealt with. I exerted myself then to gratify all parties, but

they could not be gratified, and would not be gratified. The Jersey case was associated with a sort of feeling: I do not know how to describe it—it is like the German *Wanswerduleine*, which I was reading something of in a periodical yesterday, a thing which nobody understands, and which you cannot deal with.

A few words as to the federal judiciary, and its influence. When that system was formed, the same spirit of federalism prevailed—a spirit of apprehension of the people, which appeared at the outset of our government—the spirit displayed in Montesquieu, and which regarded democracy as too dangerous a devil to let loose in society—the spirit which I attribute to Blackstone, and to those whom I harmlessly discriminated as his apprentices—this was the prevailing spirit of the time.

The distinction between the federal and the state Constitution, is very broad. The federal government emanated from the states, and not, as Mr. Webster and Judge Story supposed, from the people. The book of Judge Baldwin, to which I have before referred, shows that the federal government was created by the states. It is a state and not a popular emanation; and between the federal and the state judiciary there is all the difference in the world. The federal judiciary is something like that created in one of the European governments for trying pirates; it is for high federal purposes; for trying ambassadors; state controversies; and questions arising under the laws and treaties of the federal government. It is the tribunal in the last resort for trying constitutional questions—though this is a matter disputed and doubted by some. It was denied by Thomas Jefferson,—and John C. Calhoun will probably deny it,—but Mr. Madison asserts it.

To whom are the federal judges responsible? Not to the people, but to the states: to the senate, which represents the states. How can the Constitution, which establishes this court, be amended? Through the states. The judges are not responsible immediately to the people as they are. But, perhaps, they are still finally responsible immediately to the people. Suppose the house of representatives should refuse to put in the appropriation bills any provision for the payment of the salary of the judges. Who would compel them to do it? How could it be prevented? So, indirectly, they were as much in the control of the people, as it was proposed, by the amendment, to make them here.

But, in regard to the supreme court of the United States, I am compelled here to remark, that never did a system work worse than that. If, as it was supposed by Mr. Madison, in whom I have a deep rooted faith, the federal judiciary was organized for the purpose of settling state controversies, and adjusting great constitutional questions, it has been a signal failure. It is made plain by Judge Baldwin,—in the work to which I before alluded,—that, in the whole history of popular and executive changes, and in controversies of opinion, there is nothing like the confusion and contradiction in which the supreme court have involved themselves by their decisions. It is now impossible to say what is the law of the land on any one of the great subjects which have been referred to the decision of that tribunal. Judge Baldwin shows that, from their decision, it is extremely difficult to ascertain what is the law of the land in regard to mere matters of *meum* and *tuum*. Suffer me to say, then, that this system, too, as far as it goes, is a failure. Certain it is,

this supreme court of the United States has had to start afresh. Judge Baldwin mentions, as a proof of this, that last year he was in a majority of the court upon a question, as to which, a few years ago, he strove alone in the minority. They have now started afresh, and must begin by disentangling themselves from their former decisions. This furnished another evidence that the good sense of mankind is superior to that of individual wisdom, however well and elaborately instructed and cultivated.

Sir, our judiciary experiment has failed; and that is the postulate with which I set out. Now, granting even that all the apprehensions felt in regard to the proposed change, should be verified, what harm can be done by trying it. If it is found to be no remedy for existing faults in our system, why, then, all we shall have to do, will be, through the provision for future amendments, to go back again to the old system. Whatever may be said of my views in regard to the present judiciary system, either in the house or out of it, it does appear to me that the facts which I have adduced, cannot be destroyed, and that my inferences cannot be impugned. We have seen what a vicious judiciary can do;—I do not mean vicious personally, I mean vicious in system. Do you believe that in any party excitement, the people would conduct themselves as boldly as the judiciary have on some occasions? Do you believe that even in times of popular commotion, you would get the vote of a mob to commit a Quaker to prison for not taking off his hat; to strike half a dozen attornies from the roll, and deprive their families of the means of subsistence; to throw two respectable lawyers into prison, and keep them there a fortnight, for want of respect? We have heard of Baltimore mobs, of Lynch law, of flour rioters, and convent burners at the east; but these are spasmodic cases which will occur among the people, and cases to which the judiciary ought not to be subject. Do you believe that, if the judges were appointed, as the reputed father of the Convention was supposed, by the gentleman, to propose,—annually,—and for which suggestion, he rebuked the gentleman from Beaver with so much asperity,—meaning, I suppose, that he was in favor of appointing the judges monthly, or every morning,—do you believe, I ask, that even in that case, the judges would do such things? One circumstance more, I can mention, as a fact, that a bishop of the church was committed to prison for some fault. Would you think such things possible even from a mob?

If the people are so much to be feared,—let us refer to Mr. Dallas' letter for greater power,—let us resolve ourselves into something stronger,—let us declare that the judges shall hold their offices for any term not exceeding a hundred years—or let us propose a dictation, if, as was formerly supposed by some politicians, the people are really incapable of self-government, and their own worst enemies. But these sentiments, in regard to the people, are now seldom heard. The mild workings of our system have dispelled these fears; and it is found that the farther it goes, the better it works.

As to the petition presented by the gentleman from Fayette, the other morning, it appeared to him to contain very judicious views, couched in temperate language. If the day has come when the right of petition shall be called in question,—if the day has come, when the people can-

not meet and discuss their affairs, suggest remedies for the defects in their institutions, and ask a redress of grievances, without having their proceedings treated with contumely—I do not intend to say, that this was the intention of the remarks made on that paper, but it was their tendency—if, I say, the people are so much to be dreaded, let us muzzle them at once—let us submit to them some high-toned, some strong measures, and, if they see fit to adopt them, so be it.

One argument of the chairman of the judiciary committee struck me very forcibly, at the time it was advanced; and, upon farther reflection, seems entitled to some weight. The argument I refer to is, that the termination of so many offices at or near the same time, and so often, will greatly aggravate and magnify the patronage and influence of the executive, which it was the prevailing and anxious wish, both of the people and the Convention, to restrict and lessen. This objection made a deep impression on my mind at the time when it was urged, and it still remains there for consideration. I feel it to be a serious difficulty in the way, and it may regulate my vote on the question; but I should be very sorry if such a difficulty were to have the effect upon me and others to turn us aside from our object. I must, however, with deference, say that it has more weight in it than all the other arguments against the amendment which have been presented to us.

Mr. Chairman, no one who hears me, is as sensible as I am, of the important view which I have taken of this great subject. Precipitated into the debate, I have given my views crudely and imperfectly,—but they have, I assure you, the benefit of sincerity; and, in all sincerity, I wish to say one word as to the consequences of this vote. Who is in the majority and who in the minority, I cannot tell, and no one, perhaps, knows; for no one could have anticipated the result of the vote taken the other day on the proposition of the gentleman from Beaver. We talk of the uncertainty of law, and of the uncertainty of what God has pleased to make the most uncertain of all the other sciences,—government,—but the vote the other day shows also, that legislation is equally uncertain. We do not know how the majority will go; but we know this: that the majority on this question will take upon themselves a serious responsibility. This majority, however composed, will be responsible to the people, and responsible to posterity for the result of this proceeding. I don't know that I would not prefer a safe place in the minority to taking upon myself any share of that heavy responsiblity, which must fall upon the majority; and I am not sure that, after recording my sentiments, I may retire into the minority, and leave the responsibility in other hands. What I have said on the subject, has been said in sincerity. I know that, like other men, I am liable to the influence of prejudice, of passion, and of party, but I have endeavored to divest myself of it in considering this question. I shall continue to take an independent and sincere course in regard to it, not doubting that any amendments we may propose, will be less complained of by the people, than our present system.

With perfect respect, I beg leave again to admonish this Convention of the deep responsibility they are under to their constituents; and that, as they do well or ill here, so they will be regarded by the people, and rewarded by posterity. I am aware that we can do no permanent harm;

but I call on those of the minority, who are disposed to do right, to rally, and constitute themselves into a majority. I have no faith in tactics. They may serve to defeat or carry a measure; but depend upon it, that the stupid Germans, and the wild Irish, who, with an admixture of native Americans, form the population of Pennsylvania, have sense and shrewdness enough to see through the tactics of the greatest party manager in the world; and if this body be broken up and go home, without accomplishing the purposes for which they were assembled, they will go home despicable and despised. Let us give an honest and independent vote on the subjects before us, and leave the result to the people.

Before I sit down, I will submit the following amendment:—to strike out all after the word "him," in the fourth line which will make the paragraph read as follows, viz:

"The judges of the supreme court, of the several courts of common pleas, and of such other courts of record as are or shall be established by law, shall be nominated by the Governor, and by and with the consent of the senate, appointed and commissioned by him. They shall hold their offices during good behaviour, but the Governor may remove any judge, upon the address of the representatives of the people, by vote of the general assembly."

The Chair pronounced the motion to be out of order, at present.

Mr. Chambers, of Franklin, rose and said: Without regard to the question immediately before the chair and the committee, I shall consider the great question of the judicial tenure as now presented to the committee for their consideration. That question arises on the report submitted by the standing committee on the fifth article, with the several amendments offered to it. As one of the committee to which was referred the fifth article of the Constitution, I have given the subject my best attention, and I united with the majority in favor of the report on the table. That report is in favor of retaining the present judiciary tenure; and I must say, that I have heard nothing, since it was agreed to, to induce me to change the opinions which it goes to sustain. I now ask, as one of the committee,—and as one who has trespassed but little upon the time of this body,—to be permitted to offer a few remarks in explanation of the facts and principles which induced me to form and entertain those opinions.

I do not expect to be able to entertain or instruct this highly enlightened and respectable body; but I shall confine myself to a plain statement of my views. Let us see, in the first place, where we agree. It is conceded on both sides of the house, as an acknowledged and well established principle, that the powers of government, under the existing Constitution, are divided into three branches; the executive, the legislative, and the judicial. This division of power, is an improvement of modern times, in the science of government, not now to be contradicted or called in question: it is one that is deemed not only desirable for a free government, but so essential, that the gentleman from Philadelphia county, (Mr. Ingersoll) earnestly urged us to place the principle on the frontispiece of the Constitution, in order that it might be more deeply and permanently impressed upon the minds of every officer whose constitutional duty it is to make, or to execute the laws, or to administer justice according to the laws. Connected with this, there is

another principle:—that it is essential to the prosperity of a government that the judiciary shall be independent. We only differ, sir, as to the manner of making that department independent, consistently with a due and proper share of responsibility. I, and those who agree in sentiment with me, believe that the tenure of good behaviour is essential to the independence of the judiciary; but it is objected to this tenure, that while it gives independence to that department, it places it beyond the control of the people, or the representatives of the people, and makes it irresponsible. It is objected that, under the existing Constitution, our judiciary is independent of the people. This we deny. They are responsible to the representatives of the people; they are amenable to them, and we know of no other mode in which they can or ought to be held responsible. They should not be held responsible to any other power than the representatives of the people. You do not, in the proposed amendment, attempt to bring them down directly to the people. How are they now amenable? They were appointed during good behaviour; but they are liable to be arraigned, tried, condemned, dismissed, and rendered incapable of holding office ever after,—and the tribunal, to which they are thus amenable, is the legislature, the representatives of the people. Is not here then a direct and adequate responsibility? They are responsible directly to the representatives of the people, who are both their accusers and their judges.

Their responsibility does not end even here. They are liable to be removed for other causes, than crimes and misdemeanors, on the address of the two branches of the legislature. There may be deficiencies in a judge, which will, without affecting his judicial or moral character, render him incompetent and unfit for the discharge of his duties; and, in those cases, he may be removed on the address of the legislature.

Then we have, in this Constitution, judicial responsibility to a sufficient extent, if the representatives of the people are faithful to their trust, and faithfully discharge their duty. But we are told, that the remedy by impeachment has failed,—that it is not an efficient remedy—that it is a mere mockery of responsibility. I am not willing to admit the fact. But if it is so, whose fault is it? It is the fault of the people's representatives, who fail in the execution of their duty. This is not an objection, then, to the Constitution, but to their representatives, and the people themselves. It is for the people to choose, for their representatives, those who are qualified by their integrity and ability to discharge the trust reposed in them: and, as we contend, they have been chosen in regard to such qualifications.

It is said that, under this provision, your judges have been complained of, and have not been removed. If, sir, there is any foundation for this charge—if the representatives of the people have failed to discharge their trust—this is not to be imputed as a reproach to your Constitution, and it cannot, on that account, be said that your judiciary system is a failure.

It is said that under this power your judges have been complained of and have not been removed. Why sir, if there be any thing in this charge, the representatives of the people have failed to perform their trust. Then he would say, that this would not only be charging the representatives of the people with failing in the performance of their du-

ties, but would be imputing a failure to our republican government. In this extended Commonwealth, the people can act in no other way, than through their representatives. There is no other mode of administering a republican government, than by comitting certain trusts and powers to the representatives of the people, and it is in vain to say that our representatives cannot be trusted, without surrendering up our republican system. What is the evidence of the sweeping charge that is preferred, not against the constitution, because it is not an error in the constitution, if it be so, that our judges have been charged with crimes and have been guilty of crimes, and have not been removed by those who had the power to do it. It is said that in this Commonwealth, during its history, which has been but little short of fifty years, there have been many complaints against judges, many have been impeached and that but some two, have been removed. We have had charges preferred against some five or six or perhaps more of our judges, but not many went to the legislative department of our government, but whatever had been the clamor at home of disappointed men, whether they were suiters or the friends of suiters or their counsel, these clamors were never presented to the legislature of the Commonwealth, in more than some half dozen or ten cases. Under this system, then, which has existed for a period of near half a century, it appears that complaints have been made against some six, eight or ten judges, and out of that number, one has been removed on conviction, and another on the address of the legislature, and as it seems, the situation of some others were made so uncomfortable on the bench that they retired, and their places were filled by other men. It is reasonable to suppose that the charges which were made against these judges, and not sustained, were so well founded, and so well supported as that conviction should have followed, and that if conviction did not follow, you can only account for it by charging the representatives of the people with being unfaithful to their trust. In doing this we are reversing all the rules of evidence—we are subverting the whole criminal jurisprudence of the country, for with respect to the administration of criminal justice in those courts, which are of the highest authority in the Commonwealth, the innocence of the culprit is to be presumed, until you prove his guilt; but here in relation to judges, who have been passed upon by the senate as a judicial body, and the house of representatives as the prosecutors, you are called upon to convict them without evidence, before they have been proved guilty, and even after they have been declared innocent. In the case of the veriest criminal in your country, you are to presume he is innocent, until the evidence of the case proves him guilty; but in the other, when it is in relation to the judges who administer your laws, you are asked to presume guilt even against evidence, you are not only called upon to presume that the man accused is not innocent, but you are called upon to presume that the man who has been acquitted by the highest tribunal in the government, before which he had been called, as clear of all that had been charged against him, as guilty. There was sufficient protection to the people under the present constitution, if the representatives of the people were faithful to their trust, and neither the people, nor any of the departments of the government had any reason to complain; and he would not insinuate that the representatives of the people had not done their duty, and that they had not been faithful to the trusts reposed in them. What a sweeping charge this was to prefer against them, that the representa-

tives of the people had not been faithful to their trust. It was not that one of the legislative bodies had been unfaithful, and allowed an accused to escape, but it was a charge against all before whom these judges have been tried. It was a condemnation, not only of one of the legislative bodies, or of one legislature, but it was a condemnation of all those whose attentions had been directed to this subject. It was an unqualified condemnation, not only of one legislature of Pennsylvania, but of all before whom such accusations had been presented for trial, and in this condemnation he did not join. How, Mr. Chairman, is the responsibility of these judges to the people proposed to be provided for in the amendment which has been submitted on the part of the minority of the committee on the judiciary, as well as what was contained in the amendment to the amendment. Is there more responsibility to the people provided for in these amendments, than there is under the existng Constitution? Are the people under those amendments to pass upon the acts of these judges? No sir. They are by the terms of either amendment, made responsible, not to the people, but to the executive. Their responsibility is said to consist in the limited term of their offices, and the uncertainty of their being continued in office beyond that term, unless they deserve it. But to whom are they thus responsible, on whom are they dependent? Why it is on the executive. But we will be told that in this executive supervision, the executive will be responsible to the people. Is he, however, more responsible, or is he so much responsible as the immediate representatives of the people, that consist of two branches of your legislature, one portion of which comes directly from the people annually, and the other portion, every third or fourth year, as we may fix upon hereafter. And yet as a reason for changing the constitutional provision, we are told that the tenure must be limited, because the representatives of the people who have the power of removal for a cause, do not exercise that power. What is there, sir, which entitles the executive of this Commonwealth to such confidence as to place in his hands a power which is equivalent to the power of removal, which power you do not choose to leave with the representatives of the people. It is a fallacy to say that limiting their term of office and making them dependent upon the executive for their continuance in office, is leaving them with the people. This was only substituting one department of the government for another. It is but substituting the executive for the legislative department, and who is more willing to trust the Governor than the legislature? But say, gentlemen, a good officer, a faithful and honest judge, is not to be removed. If he deserves his place, he is to be continued, and it is only the unfaithful and dishonest who are to be removed. What is our security for this? What security have we that the Governor may not remove the judges for some private grief or political prejudice. Why, sir, under the existing Constitution, if a judge is faithful he is secured in his office, but if he is unfaithful, or incompetent, provision is made for his removal, by the representatives of the people, or the address of two thirds of the legislature. This security you have under the existing Constitution, but what security have you that the governor will reappoint a faithful and honest judge, or that he will not reappoint one who is unfaithful. Governors are as liable to abuse their trusts or indulge their partialities, as the representatives of the people, the legislative department, and much more so in his opinion. But we have been told

that in making these appointments, the Governor will regard popular opinion. That may be, or it may not be. It may be that he will refer to the popular opinion of the district in which the judge resides, if he himself is a candidate for re-election; and it may be that for the time that public opinion may be subject to commotion and excitement, and entirely wrong, which, in another twelve months might have passed off, and for which there might have been no foundation at the time. But, sir, in an amendment which we have already adopted, and which very probably may become a constitutional provision, it is proposed to limit the Governor to two terms, amounting in all, to six years. Then what becomes of that popularity which you are to appeal to during the last three years of his term. Is he during that term to be looked upon as a representative of the people, courting their favor? Is he then, to be looked upon as that officer, who will continue the faithful, remove the unfaithful, and have an eye single to the best interests of the Commonwealth, because he is looking to the popular suffrages of his fellow citizens. Sir, by giving the Executive this power, we are reposing in his hands that which goes to extend the patronage of the Executive to a tremendous extent. It did therefore, appear to him that those who advocated the placing this power in the hands of the executive, under pretence of thereby making the judges responsible to the people, were not only extending the patronage of the executive, against which they have been contending, but that they were laying themselves open to the charge of inconsistency. We have been again and again told, that one of the greatest complaints of the people against the existing constitution, was the extent of the executive patronage; the power he had in making appointments to office; and yet, here we have a proposition which goes to increase that patronage, by bringing all the judges of the Commonwealth at stated times, within the power of the executive. It is said, however, that the same governor will not have the power of reappointing the same judges, which he may have appointed, because their term of office will extend beyond his. He cared not whether it was the same imdividual or not; it was the same rule by which they were appointed—it was the same department which appointed them, and thereby you place your judiciary at the feet of the executive. If the judges are to be brought home to the people as gentlemen say, and not only feel their responsibility to them, but that they are also to feel their acts, why not give their election to the people. This intention however, was totally disclaimed by the gentlemen from Luzerne, (Mr. Woodward) who on the part of the minority of the committee, laid his views before the committee, with an ability, an eloquence and a research which to him, (Mr. C.) was a great qualification, and he has told us that he was opposed to the election of judges, either by the people or by the legislature. Why, sir, if it is to be considered as essential that these judges should be responsible to the people, why not make them directly responsible to the people, why not bring them home directly to the people to be passed upon. But is it making them responsible to the people, to merely make them dependent on the executive for their continuance in office. Why, it is all a farce, to think of making them responsible to the people in this way. They will be no more responsible to the people, by making them dependent upon the Governor, who is to have their appointment, than they are now, through the immediate representatives of the people, who, have the power at any time to remove them by

address and impeachment. We who go for a tenure of good behavior make the judges responsible to the people, by making them removable by the legislature for high crimes and misdemeanors, by impeachment, and we further make them responsible by making them removeable on the address of both houses of the legislature. We go for making them responsible to the people by making them accountable to the representatives of the people or the legislature, and this amendment goes no farther than this, only it proposes to substitute the Governor for the legislature. We sir, are for the independence of the judiciary.

The independence I want, is an independence of any undue influence from any quarter that will control or operate on the minds of the judges in the impartial administration of justice according to law. It is an independence not of the people, but an independence for the people, and for the protection of the rights of the humblest citizen of the Commonwealth against oppression or injustice from whatever quarter it may be attempted.

It is an independence that will protect the people against any encroachments on these rights by the executive or legislative departments of the government. These powerful departments may usurp and exercise powers not committed to them, but forbidden by the constitutional compact, and against such the individual citizen will vainly resist without the aid and shield of an independent judiciary to sustain his rights.

It is an independence that will protect the citizen against state power. Let the government be the prosecutor, let official experience by brought in aid of the prosecution, yet with an honest and independent judiciary, the most humble citizen under the panoply of the law, with her virtue, integrity and innocence for her shield, will pass the ordeal of persecution any trial unhurt either in her person, character or estate.

It is an independence that will protect the obscure citizen against party leaders, popular favorites or any other idol of the day, whose claims may be brought into conflict, and which will be weighed in the scales of justice by the firm and unwavering hand of an independent judge.

It is an independence that will afford the same measure of justice to the poor man, that it does to the man of wealth, let his possessions and interests be as extensive as they may; and it is an independence that administers to the stranger in the land, the same rule of right and law, that it does to the most influential family, whose possessions and connections surround the place of trial and judgment.

It is for such interests, which are those of the people, that independent judges are wanted, who will pronounce the judgment of the law, regardless of every other consideration than those arising under the law and the evidence. Judges whose term of office is limited to a term of years, before the expiration of their term, will turn their eyes to the appointing power—whether that power be with the people, the executive or legislative departments, it will have its influence on the feelings and judgment of the judge who is a man with his infirmities. His feelings and his interests will lead him to fear and conciliate that person on which depends his place, and this when he should alone consider the Constitution and laws by which the rights of all the people are to be decided.

If the judiciary is made dependent on either the executive or legis-

lature for its continuance, is it to be expected that it will willingly hazard the displeasure of either, by placing itself in opposition to usurpation or encroachments by those departments. The effect of it will be to weaken still more the judiciary, which is already the weak department of our republican government; and you deprive the people of the most efficient check which has been devised to maintain constitutional government and prevent encroachments by the executive or legislature, on the rights of the people.

The judiciary department will take care in the administration of the laws, that both the other departments of the government, so far as their acts comes before them, shall be within proper limits. The Constitution is the paramount law. It is the law emanating from the people, which is to be maintained by your judiciary when it comes into conflicts with the usurpations of the other departments of the government. When your executive or legislative departments usurp powers, this is the department which is the sheet anchor of our safety. This is the department which will hold them close by the Constitution, and prevent them from stepping beyond its landmarks. This is the department which is to protect your rights and your liberties, both from the encroachments of government and from the encroachments of powerful individuals.

If it should be considered that there ought to be other responsibility than what now exists in the Constitution, and a change was to be made, he himself would prefer that brought to the notice of the committee, by the gentleman from the county of Philadelphia, (Mr. Ingersoll.) He would prefer going back to the colonial act of 1759, rather than taking either of the amendments proposed, because we would then have an independent judiciary, and yet have as much responsibility as could be desired.

The difference between that provision and the existing Constitution would be, that instead of having the judges removable as they are now, upon the address of two thirds of the legislature, to have them removable by a bare majority of the legislature. It would then leave your judges during good behaviour, subject to this restriction. Such a provision as this would be much more consistent with the principles, of those who affirm that they are for responsibility to the people, than the amendment pending. With this provision, the judges would be made more responsible to the immediate representatives of the people, a majority of the Legislature having the power to remove them, and then they would not be dependent for their continuance in office, upon the power that appointed them. Their continuance in office then, would depend upon the people, through their representatives, but adopt the amendment pending, requiring them to be reappointed by the Governor, and you make their continuance in office depend upon the Governor, and a portion of the senate. This would be giving the power of appointment to one branch of the government, and the power of removal to another. As it was not in order to present the amendment at the time the gentleman brought it to the notice of the committee, he hoped that before we got through with this article, we could have the opportunity of considering it; not however that he was prepared to adopt it now, in preference to the existing Constitution, but that he preferred it to either of the amendments which have been presented. He had, to be be sure, voted for the

amendment of the gentleman from Beaver, but he only did so because it was preferable with him to the amendment of the gentleman from Susquehanna; when the question however, came to be taken between it and the existing Constitution, he would go for the Constitution as it stands. He was not prepared now to say, but that he might be brought to vote for this proposition which had been brought to the notice of the committee, by the gentleman from the county of Philadelphia, if a change was to be made, because it would not compromise the independence of the judiciary, and it would make them more responsible to the people, than they now are. It may to be sure happen, when the community are under the influence of some party feeling, or some sudden commotion, that judges will be removed, for no cause, but when the cause for these feelings has ceased to exist, and when all is calm and tranquil, justice will be done to the removed officer by the public. The public will do him that justice, which his merits deserve, and if injustice should happen to be done, such occasions will be beacons to be referred to, to warn the legislature from inconsiderate acts. This amendment at least combines more of the responsibility to the people, than the amendment of the gentleman from Luzerne, which merely goes to transfer the responsibility from one class of representatives of the people to another.

But we have been charged with a surrender of the principle on the part of the majority of this committee, in consenting to a limitation in the tenure of the justices of the peace, by making them elective for a term of years. He however did not think so. The justices of the peace are nominally a part of the judiciary of Pennsylvania, yet it was but nominally. He conceded that their powers were great and their influence in the administration of the law, was also important; but they have never been considered or treated either in the legislature of the state, or the public opinion of the country, as a part of your judiciary. Before the adoption of the present Constitution of 1790, it is well known by this Convention, that the ordinary quarterly courts were held by the justices of the peace, they composed the quarter sessions and the common pleas. At the time of the adoption of the present Constitution, it was not thought advisable to continue these courts thus organized, and our courts were differently constituted. It was then declared that "the judicial power of this Commonwealth shall be vested in a supreme court, in courts of oyer and terminer and general jail delivery, in a court of common pleas, orphan's court, register's court, and a court of quarter sessions of the peace for each county: in justices of the peace and such other courts as the legislature may from time to time establish."

Under this Constitution then, Mr. Chairman, we had our courts reorganized without the justices of the peace forming any part of those courts; although they had before holden those courts. The first legislation under the Constitution of 1790, was to take away their power as courts. Their place was supplied by the presiding judge, who had the aid of four associate judges. These composed your county courts, and your justices were left with the petty jurisdiction of five pounds. Their jurisdiction at the present time—that is to say, their absolute jurisdiction, from which there can be no appeal, is not beyond the amount of $5 33. In the exercise of their great power beyond that, they rank a little more than ministerial. It is competent for any party who may come before

them to insist on a reference of their case to referees. In this event, the case is withdrawn at once from the jurisdiction of the justice of the peace, and from that moment it is entirely beyond it. The justice, after that, has no more to do with it, than the prothonotary of a court in an action pending, and in which there is entry of rule of reference. He is but the mere machinery of office, by whom the judgment is to be executed, without the possession of any power in relation to it. When these referees are thus chosen, there is an end to his power. The whole matter, so far as it is thus referrable, is exclusively within the power of the referees. They pass upon it; and on their report, whatever that may be, he must enter judgment. He has no other concern with the matter. He has not even the power to grant a new trial. He is but the minister of the law, whose duty it is to make an entry and return of the report of the referees who may be chosen by the parties to decide upon their case. He enters the judgment upon their report; the prothonotary does the same thing. He issues execution. The prothonotary likewise does the same thing. So that the acts and duties of the justice of the peace, affect, to a considerable extent, the rights and interests of the people of the Commonwealth of Pennsylvania, still they are in a great measure but ministerial acts and duties. He is not known, or treated, or recognized, as a judge of your courts of law. He is allowed to practice as an attorney in all other cases, excepting in those cases in which an appeal may have been entered from his own judgment, while the law of the land denies to the judge the right to practice in any court or case. You do not choose even to allow him a salary. He is to be compensated for his work, whether it is judicial or minisetrial, in the same manner as that in which the clerk of the court is to be compensated. He gets his fees, and nothing more nor less, for his compensation. There is no necessity, Mr. Chairman, that this tenure of office should be an extended one, so far, I mean, as the independence of the judiciary is affected, as is required in the case of the judge of your courts—beeause his duties are distinct. The duties of the justice of the peace, so far as they relate to the exercise of his own judgment, are limited to forty shillings, and then, if any question of law is involved, it is open to revision and to correction by your courts of law. As I have before stated, the one great object of having a judiciary, is independence. Without that attribute, your judicial department may, in the exercise of the many important duties which belong to it, be brought into conflict with the other departments of your government. This independence, I say, is essentially requisite to sustain the constitution and the laws, and to guard them against encroachments and usurpation on the part of the other departments. But this is not expected from your justices, because, if they pass judgment, they are questions which are subject, as I have said, to the review and correction of your courts of law.

In several of the other states of this Union, Mr. Chairman, where there has been secured, by means of a constitutional provision, a tenure of office during good behaviour to the judges, the justices of the peace have been made elective, and their tenure of office has been limited to a term of years. This is the case in the state of Maine, and also in the state of New York. In those states, the judges of the supreme court, and of the circuit courts also, are commissioned to hold their office during good behaviour. It is not considered there that, if there was not the

same constitutional provision made for the one as for the other, it was a surrender of principle; because if there is any force or meaning at all in the charge of inconsistency which has been made here against the majority of the committee on the judiciary, in relation to the justices of the peace, it is undoubtedly a two-edged sword, which cuts as well the gentleman from Luzerne, (Mr. Woodward) who is one of the minority of the committee, as it does the majority.

Mr. Chairman, we have been told by that gentleman, that the justices of the peace constitute a most important branch of the judiciary of the state of Pennsylvania. If this be the fact, how does it happen that a proposition has emanated from him and his friends, to make the justices of the peace elective by the people, for the period of four years. Why does he not also propose to make the judges elective, if it be true that they both stand on an equality. If the justices are not in any respect distinguishable from the judges of your courts, as in reference, I mean, to the power of the judiciary, why not treat them both in the same manner—why elect the justices, and appoint the judges? On what ground does the gentleman justify this difference? There surely must be something, in the opinion of the gentleman, which goes for this limited tenure and this distinct mode of appointment, to separate them from the other judges of the courts; for even the associate judges of the court of common pleas, according to the amendment of the gentleman from Luzerne, should be appointed by the Governor. If they are not distinguishable, the inconsistency which has been charged on the majority of the committee on the judiciary, is certainly as much at the door of that gentleman as it is with the majority of the committee. But, they *are* distinguishable, and the majority of the committee have treated them both as being distinguishable.

But again, Mr. Chairman. We have been told that, although the judges ought to be independent, still that they will be so, under a tenure for a limited term of years. Let us examine into this position! How is it so? It has been again and again said here, and with great truth as we all know, that judges are but men; and that their character is not changed in that respect, by being placed upon the bench. They are still men, possessing all the passions, and subject to all the frailties and infirmities of men. You propose then to place these men in a position, where they are to look up to a certain power for reappointment at the expiration of the term of years for which they are originally appointed to office. You are making them dependent, not on the people as I said before, for their reappointment, but upon the executive; and, although, under an amendment which has been adopted under the vote of the committee of the whole, the concurrence of the senate may be required, still the nomination originates with the executive himself. These judges then, being but men, with the frailties and infirmities of men, will act with reference to the power on which their place depends—on which, indeed, their very means of subsistence depends. Let us look at this matter, then, in a reasonable light. Is it to be expected that the judges who are thus situated—dependent on the executive for office—is it to be expected, I ask, that such men will willingly hazard the displeasure of the executive, or even of the legislative department, in their discharge of their official duties! It is a contact which they will be most anxious to avoid, and it will be to

them often an unpleasant duty, where there is in the man himself independence enough to do so, to make any sacrifice in the discharge of that duty.

This tenure during good behaviour, I consider, Mr. Chairman, to be a question of very grave importance, so far as it has influence in securing the proper qualifications in those who present themselves as candidates for the office. If there is one subject which, more than another, is of deep and vital interest to the people, it is the judiciary of your Commonwealth. It is a department, as has been truly stated by a gentleman who preceded me in this debate, which comes home directly to the people ; it is a department of which they have daily cognizance. The legislature of your state may be in session for a whole winter, and may pass a whole volume of laws, without, perhaps, so many as one hundred of your people knowing, or caring, any thing about what they contain, unless those laws may chance to operate directly on their own peculiar interests. Your executive may go through his term without the people feeling the effects of any of those acts, and without the great body of the people knowing even so much as what they are. But, sir, your judiciary is at all times before the eye of the people. Your people are continually participant in the exercise of the power of this department. They are brought, day after day, to act with it, either in the character of jurymen, parties, witnesses, or spectators. The matters upon which it is the duty of this department to pass, are matters of interest immediately within their knowledge. They are passing upon the rights of their fellow citizens ; and upon the rights of property, within their own immediate neighborhood. It is then, Mr. Chairman, a department of infinite interest to the people ; and, as has been also said, it is also the weak department of our government. It has indeed always been acknowledged to be the weak department in every republican government. It has no patronage to bestow—it has no presses at command. The very exercise of its duties, important and delicate as they are, instead of making it friends, is calculated to raise up enemies. What then do you want, Mr. Chairman, in the qualifications of men who are to fill the high places of that department. It is an office established for the protection of individual right—to maintain the public peace, and to redress the public wrongs. In such an office we require men of undoubted talents, of great legal acquirements—men of experience—men of integrity—and men possessing, in an eminent degree, the confidence of the public.

Qualifications such as these are not to be found in many ; and when you do meet with them, you find that they have been mainly obtained by the study and the labor of years. A voluminous code of laws belongs to a republican government. In a country where a people are attentive to their rights, and tenacious of their liberties there will be litigation. Questions spring up continually in the government of a free people, which are altogether new in their character ; and in no country in the world are men more exposed to these questions, than we are under our republican government, connected as it is with, and dependent as it is on, the action of the federal government. If then men are to be procured who possess the requisite qualifications for these high judicial offices, where do you seek them ? You must, of necessity, seek them from among the profession of the law—and the men who possess these high qualifications are

men in the possession of a lucrative practice at the bar—and who are enjoying a remuneration much greater than that which the people are willing to allow for the services of their judiciary. What then are the inducements to such men to take this office? Not merely the honor of the place. I think few men would take a judgeship in the Commonwealth of Pennsylvania, or out of it, for the mere honor which is attached to the office. It may do very well to talk about this honor, but it will not extend beyond the first quarter. Men look for something more than honor. The situations certainly are honorable in themselves and dignified—and, on that account alone, they would be desirable to men whose worldly means are so ample as to admit of their accepting them.

But what, Mr. Chairman, are the inducements to accept these offices; if that of honor alone should not be found sufficient? They are to be found in two considerations; the first of which is, the remuneration —and the second, the tenure of office. The remuneration ought probably to be extended—but you cannot, I believe, extend that far enough to supply the place of the tenure during good behaviour. You can not extend it so as to induce men who are qualified for the office, to take it for a term of years. What then would be the effect of this tenure for a term of years? A man who is in the enjoyment of the public confidence, who is in the possession of a large practice, as a professional man, would be unwilling to relinquish that practice, lucrative as it is, for a place which he was to hold only by the uncertain tenure of a term of years. That very situation, if he should accept it, would unfit him to return to the practice of the law. The very duties which belong to a judge are so different in their characters, from those which belong to the active life of a lawyer—that a member of the profession is rendered unfit to return to the active duties of the bar when he is so disposed, or in case necessity compelled him to do so. If then, Mr. Chairman, you are to have men who are thus qualified to administer the laws of the land, to decide on the rights of your citizens, and to maintain your constitutional government, then they say that you must hold out competent inducements to men who are qualified to take the place—and those inducements, in my estimation, are nothing less than the tenure during good behaviour—coupled with a proper responsibility in case of misbehaviour or malfeasance in office. I do not believe that any inducements which you can hold out, short of this, will be sufficient to secure to the state the services of such men, as ought alone to occupy these high judicial places in your Commonwealth.

I have thus endeavoured, Mr. Chairman, to present to the committee the reasons which influence me in the belief that the tenure of office during good behaviour, is essential to the independence of the judicial department of our government.

I shall beg leave, in the next place, to turn the attention of the committee for a short time, to the experience which we have had in relation to that department, and in relation to that tenure. I was very forcibly struck, Mr. Chairman, by a part of the advice which was given by the father of his country, in his Farewell Address to the people of the United States, when he was withdrawing from power and place, as we heard it read from that chair, on the 4th July last. I allude to that part in which he deprecates all experiments with the government. I offer

no eulogy—it is enough to know that the advice came from WASHINGTON. That great man who had done so much to obtain our independence, and to give stability to our republican form of government, and our institutions, gave this emphatic advice—which is now deserving of our notice and regard; "You ought, says he, to resist with care the *spirit of innovation* upon the principles of the government, however specious the pretext."

"*Time and habit* are at least as necessary to fix the true character of governments, as of other institutions. *Experience* is the surest standard by which to test the real tendencies of the existing Constitution of the country. *Facility in change*, upon the credit of mere hypothesis and opinions, exposes to perpetual change, from the endless variety of hypothesis and opinion."

This, resumed Mr. C. was the admonition of a patriot and a sage. The proposition which we now have before us, is a proposition to change the existing Constitution of the government, which we have had as our rule and guide for a period of nearly fifty years—and, in relation to this very important branch, to introduce an entire change of tenure.

Notwithstanding what we have heard about the tyranny of this government, of its opressions, of the abuses which exist in the various departments, I, for one, am free to express my belief that, as a people, we have prospered under it—and that the Commonwealth of Pennsylvania, since the establishment of the Constitution of 1790, has flourished to an extent which has not been surpassed by any of the free states of this Union. There may, indeed, Mr. Chairman, be some cases of individual wrong; there may be some cases of official abuse. I do not doubt, that such may be found. But where, I would ask, in what age of the world, in what government on earth, are they not to be found? Where, among the institutions of man, will you search for an exemption from these abuses of office and of power? What has been our own experience in the Commonwealth of Pennsylvania, in relation to this very department? We have had before us, sir, the history of the movements of the people of Pennsylvania, from the time of the first charter to the present, in reference to this department. The tenure of good behaviour was sought by the freemen of this State in the very first year of the establishment of the government. So far back as the year 1683—the year after the charter—at the instance of the freemen of this state, then a province, there was a concession made to them, on the part of the proprietor, of this very tenure of good behaviour for the judges. A difficulty arose in the administration of that government, and the charter was surrendered in the year 1700. In the year 1706, only a brief interval of six years, we find the same freemen in their conference, again claiming this right. In the year 1759, we have them actually providing for the tenure of good behaviour, by a legislative enactment. That law having been repealed by the king in counsel, we have again an expression of opinion on the part of the committee of the legislature, of which Benjamin Franklin was the organ—complaining that they had not got what had been promised to them—namely, the tenure during good behaviour, for their judges. I will again trouble the committee, by reading what was recurred to by my friend from Union, (Mr. Merrill) to whose

lucid argument I listened with much gratification, and to whose research I am indebted for much useful information, with which that gentleman furnished us, in relation to the history of Pennsylvania.

The value of that information, must satisfy all who heard it, how desirable it would be that there should be published a portion of its documentary history, which is now to be found only in MSS. in the office of the secretary of state. Every thing connected with it is dear to us now, and will be dear to those who shall come after us. I read, Mr. Chairman, from the second volume of Franklin's works, at page third. It is an extract from the report of the committee of the assembly of the Commonwealth of Pennsylvania—of the date of February 22, 1757—and is from the pen of Thomas Franklin:

"*Fifthly*, by virtue of the said royal charter, the proprietaries are invested with a power of doing every thing, which "with a complete establishment of justice, unto courts and tribunals, forms of judicature, and manner of proceedings, do belong:" "It was certainly the import and design of this grant, that the courts of judicature should be formed, and the judges and officers thereof hold their commissions, in a manner not repugnant, but agreeable to the laws and customs of England; that thereby they might remain free from the influence of persons in power, the rights of the people might be preserved, and their properties effectually secured. That by the guarantee, William Penn, (understanding the said grant in this light,) did. by his original frame of government, covenant and grant with the people, that the judges and other officers should hold their commissions during their "*good behaviour, and no longer.*"

"Notwithstanding which, the Governor of this province have, for many years past, granted all the commissions to the judges of the king's bench, or supreme court of this province, and to the judges of the court of common pleas of the several counties, to be held during their *will and pleasure*; by means whereof the said judges being subject to the influence and directions of the proprietaries, and their Governors, their favorites and creatures, the laws may not be duly administered or executed, but often wrested from their true sense, to some particular purpose; the foundation of justice may be liable to be destroyed; and the lives, laws, liberties, privileges, and properties of the people thereby rendered precarious and altogether insecure; to the great disgrace of our laws and the inconceivable injury of his majesty's subjects."

Here then, continued Mr. C. we find the legislature of Pennsylvania, in the year 1757, complaining, through their committee of grievances. And what were those grievances? They were that they had not got what William Penn promised to them—namely, that the commissions of the judges should be during good behaviour, but that they were appointed during the will and pleasure of the Governor. And, at that day, this tenure was considered as a matter of interest to the people, and as requisite for the security of the people, and for the independence of the judiciary.

Mr. C. here gave way to Mr. FORWARD, on whose motion, the committee rose, reported progress, and obtained leave to sit again; and,

The Convention adjouurned.

THURSDAY AFTERNOON, November 2, 1837.

FITFH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'Sherry in the chair, on the report of the committee to whom was referred the fifth article of the Constitution.

The question being on the amendment of Mr. Woodward, as amended on motion of Mr. Dickey.

Mr. Chambers resumed. Mr. Chairman, when the committee rose this morning, I was exhibiting to the committee the evidence of the acts of the freemen of the province of Pennsylvania, in complaining of the proprietary who had withheld from them the rights which had been granted, and that the right which they complained of had been withheld from them, was the tenure of good behaviour to their judges—complaints commencing with the year 1683, the year after the charter, and extending to the year 1757 and 1759; the act of 1759 being no other than an act claiming this tenure, by legislative provision, as a right, and proposing to give effect to it as such. The last act of the assembly of Pennsylvania, under the proprietary government, was repealed, as I have before stated, by the king in council; and we have no record after that period. Why have we not? Because it was a period of trouble between the colony and the mother country, when no concessions were allowed, and when not even conferences were admitted on the subject. The next step which was taken on the part of the colonies, by whom complaints had again and again been made in vain, was the declaration of independence. At the period then of 1776, we come down to what has been called the revolutionary government of Pennsylvania, which was established by the Convention in the year 1776. That Constitution has been extolled by gentlemen who advocate the proposed change of the existing tenure under the Constitution of 1790. It is a Constitution which has served its time—a Constitution, which no doubt, in the view of the men who framed it, was temporary and provisional. It was framed under the exigency of war, with an enemy in the country. It was formed at a time when it was necessary to build up a Constitution which might serve for a season. The people, only a week or two before, by virtue of the declaration of independence, had separated from the mother country. Having united with their fellow citizens of the other colonies, in declaring themselves independent, it was necessary that a government of some kind or other, should at once be established. The government then was formed at that time with reference to a state of war. It was—and it must be considered as—a government clearly provisional and temporary; for it was not known, and it could not be known, where the revolution would land us, or what would be our relations to the other states of the Union. We had then a bond of union—articles of confederation which were no more than a rope of sand. In eulogy of this Constitution, it has been said, that it answered triumphantly well, the purposes for which it was created—and

that it carried us through the war of the revolution. Sir, it was not the Constitution which carried us through that glorious, but fearful struggle. It was the patriotism, the virtue, and the courage of a free people. You might as well say that the articles of confederation had carried us through our struggle, as that the Constitution of 1776 had done so. Sir, I repeat, it was the patriotism of our people that carried us through. It mattered very little indeed what was the form of government, so long as there existed such a spirit in the people.

This form of government, established in 1776, was to be provisional and temporary with reference to a state of war. Its executive was made elective by the counsel and the assembly. It had but one legislative body. Is there evidence, or is there not, that this Constitution was to be considered as a permanent Constitution, by which the welfare, the liberties, the rights, and the interests of the people of the Commonwealth of Pennsylvania, were to be controlled and governed, after peace was established. Sir, there is no such evidence. On the contrary, we find that during the war, the Constitution was complained of in an address, printed in the year 1779, which was signed by several of those very men who signed the declaration of independence, as well as by other citizens, even during the pressure of the war. And no sooner had peace been established, than the attention of the freemen of the Commonwealth was directed to the revision of this Constitution. The council of censors, whose office it was under that Constitution to revise it, and to consider and make known what were its defects—were elected only once in the period of seven years. Under that provision, the first council would be elected in the year 1783—the very year afterwards their attention was directed to it, and they considered it as defective, and called for a revision—that is to say, a majority of the council of censors did so. I refer, to the proceedings for the call of the Convention at that time, page seventy, for the purpose of shewing what was one of the great grievances to which the attention of the censors was called. The passage is as follows:

"That, by the said Constitution, the judges of the supreme court are to "be commissioned for seven years only, and are removable (for misbe- "haviour) at any time, by the general assembly. Your committee "conceive the said Constitution, to be, in this respect, materially "defective.

"1. Not only because the lives and property of the citizens must, in a "great degree, depend upon the judges, but the liberties of the state are "evidently connected with their independence.

"2. Because if the assembly should pass an unconstitutional law, and "the judges have virtue enough to refuse to obey it, the same assembly "could instantly remove them.

"3. Because at the close of seven years, the seats of the judges must "depend on the will of the council; wherefore, the judges will naturally "be under an undue bias, in favor of those upon whose will their com- "missions are to depend."

This, continued Mr. C. was the opinion of the majority of the council of censors; but, inasmuch as it required, under the then existing Constitution, a majority of two-thirds to have a call of a Convention, the

call was not at that time had, but the legislature directed its attention to the subject, and so great was the demand on the part of the people for a revision, that they would not wait for the period allotted for another election of censors, and which period was not to arrive again for the long space of nearly seven years. When the subject of calling the Convention came up before the legislature, which was on the 24th of March, in the year 1789, it will be found by reference to the same book from which I last quoted, that the vote was in favor of the call 41—against it 17; so that more than two-thirds, or nearly three-fourths of the legislature of 1789, recommended to the people to call a Convention, for the purpose of revising the Constitution. And it is to be remarked here, Mr. Chairman, that this Constitution had never been submitted to the people for ratification. The Constitution of 1776, as adopted during the revolution and under the pressure of war, never was submitted to the people for their approval or rejection, and we find the people complaining not only by address, but through their organs, immediately after the establishment of peace, of defects in the Constitution, and assigning the tenure of the judges as one of the great grievances under it.

Well sir, the legislature, by the vote which I have mentioned, determined on having a call of a Covention. Delegates to the Convention were elected by the people, and what is the evidence which we have of public sentiment at that time in relation to the judicial tenure? I will read a paper from page one hundred and fifty-one of the same book. It is as follows:

"*Resolved*, That the judicial department of the Constitution of this Commonwealth should be altered and amended, so as that the judges of the supreme court should hold their commissions during good behaviour and be independent as to their salaries, subject, however, to such restrictions as may hereafter be thought proper."

This resolution, continued Mr. C. was adopted by a vote of fifty-six to eight; and among the yeas, I see the names of WILSON, M'KEAN, WHITEHILL, SNYDER, SMILIE, FINDDEY, IRVINE, &c.

When the subject came again before the Convention for final adoption, so united were the members in their opinions upon it, so nearly unanimous, that the constitutional provision which now exists was adopted without a division.

And who, Mr. Chairman, were the members of that Convention? Who were they whose names were registered among the yeas in favor of the adoption of this constitutional provision? They were men of eminence in your Commonwealth, men not only of talents and acquirements, but also of very great experience. The men whose names I have just read were among the most prominent members of the democratic party. Were they not men who had lived under the Constitution of 1776? who had been active, not only as citizens but as public magistrates, under the proprietary government, prior to the year 1776? And were not such men well qualified to give us a form of government, which was suited to our condition and our wants? Great as is the respect which I entertain for the body of which I am here a member, still I am not willing to concede, that we are, in any respect, the superiors of the men who formed the Constitution of 1790, or that we possessed any advantage of them in any thing to be derived from history, or even from experience. And, sir, I shall be well satisfied if the work of our Constitution, as it shall

leave our hands, if it shall subsequently receive the sanction of the people may promote the prosperity and happiness of this Commonwealth, to the same extent as did the Constitution of 1790. Sir, were not the men of that day—those whose names I have read—acquainted with the science of government? Were they not men who had been schooled not only in times which tried men's souls, but schooled in times when the structure of human government, and the question of what form of government was best suited to a free people, was the subject of discussion in popular assemblies, in periodical journals, in the weekly papers, in the ordinary meetings of the people, and at their fire sides? Who was Thomas McKean? Was not he qualified in point of knowledge and of experience to construct for us a form of government? He had been a member of the American Congress, from its opening in 1774, till the peace of 1783—and a part of that time, he had been the presiding officer of that body. He was also the chief justice of the state of Pennsylvania, from the year 1777, for the period of twenty-two years, under the Constitutions of 1776 and 1790.

Sir, it is not for us to decry the Constitution of 1790, by underrating the men who framed it. It is not for us to be told here that its features are aristocratic, when those features, thus complained of, were introdnced by nearly an unanimous vote. What has been our experience under this Constitution? We admit that our state has prospered, our citizens free and happy, and justice been administered promptly and without delay. The rights of individual citizens have also been protected and the public peace maintained. But, sir, we are told of individual instances of misbehaviour, or oppression, on the part of some of the judges. I am not going into a vindication of any official officer. We are not, sir, I trust, going to try the judges of the Commonwealth—neither the living nor the dead. This is not the place of trial, and if they are to be tried the least that can be done is to give them notice of it. They should know whether we intend to give them a hearing or not. Sir, there may be, and probably always will be under this or any government, cases of individual wrong. But the question is, will they be few in number under a government, with a judiciary, limited to a certain number of years? For, I would remark, that whatever the mischief, or evil, or inconvenience which may have been experienced, owing either to the incompetency or unfaithfulness of judges, it is not chargeable to the system. It is a circumstance to which every system is exposed; it arises from the infirmity of man, and of human institutions. It is, then, for those to make the experiment of a tenure for years, who may think proper to do so. The experiment of 1776, was tried and abandoned by the very men who introduced it. I have already said that I would not go into a vindication of the conduct of individuals. This is not the proper tribunal, nor am I qualified, if it was, to enter upon the task. We have been informed that there has been a denial of justice. Now, I am not aware of any recorded evidence of it. We have been told, too, that there are a great many suits remaining on some of the dockets. It is well known, sir, to many of the members of this Convention, that the business of the courts was greatly increased ten or fifteen years since, on account of the overtrading that had a few years previously taken place, and in consequence of the controversies which resulted from it, and the sacrifice of property under executions. The business of the courts, for a series of years, increased, I may say

ten fold, and it was beyond their ability to dispose of it faster than they did. But, sir, the complaints that were made now no longer exist. Complaints of this character are not confined to Pennsylvania; they are common in other states, under like circumstances. Sir, the cases on your supreme court docket are disposed of, and in the county courts, I am not aware that there is any cause for complaint. But, sir, we were told that the people are dissatisfied with the Constitution, and particularly in regard to that provision of it respecting the judges. What evidence have we, sir, that such is the fact? Why, we have been referred to some petitions that were presented to the legislature in 1805, and 1810, and at one or two periods since. Now, to what do they really amount? They were signed by a few thousand citizens of the Commonwealth; and when we consider and reflect on the manner in which signatures are generally procured to documents of this character, it cannot be regarded as any great evidence of public opinion. Sir, the best method of ascertaining public sentiment, is through the ballot boxes. The representatives of the people who came here from every district of the state, in 1803–4, were unwilling to adopt resolutions for the call of a Convention, until they had been laid before the people, in order that they might know what credit to give them, and to see what was their character. But, in 1803–4, the legislature yielded to a strong expression of public sentiment through the ballot boxes. What was it? Why in 1825, a majority of fifteen thousand votes were given against calling a Convention—thus showing that the people were in favor of the existing Constitution—were contented with it, as one that secured them in their rights and their liberties. But, it has been said that reform was wanted—that, at each election for Governor, the people have demanded reform. I know, sir, that we have heard the cry of "reform," and that reform was required. But, of what kind was it? It was radical reform in the administration of the government—a correction of the abuses of power that was wanted. Here was a field for reform, and a wide field too. There could be no doubt that reform was desired in the government. Many bad appointments of judges and other officers had been made by the various Governors, and other abuses were known to exist. Sir, the reform, however, which was desired, was in respect to the administration of the government and not the Constitution. We have had party judges, it is said,—men who identified themselves with the several parties of the country—allowing themselves to be used for party purposes—attending meetings and acting frequently as presiding officers of them; and even descending so low as to become committees of vigilance. In vindication of the conduct of such judges I have nothing to say. They have dishonored their station. A judge has the same political rights as every other citizen; and he has a right to exercise them. He, however, should not be a partisan for if he be, he will have the prejudices and feelings of a partisan; and if he does not do injustice, he at least will be suspected of it. But, sir, we have been told that the system is tyrannical, arbitrary, and odious to the people. This, sir, I think was the language used by the gentleman from Luzerne, (Mr. Woodward) that the system was odious and disgusting. The gentleman certainly used language which, I think, was uttered without consideration. And, he said that the system was so disgusting that its judges were a stench.

Mr. Woodward rose and explained, that the remark he dad used was applicable to the system, and not to the judges.

Mr. Chambers: resumedI understand the gentleman. I am not willing to admit that this system has been regarded as disgusting, and that the people have been condemning it from one end of the Commonwealth to the other, while they have been sparing the other departments of the government. I cannot believe that the wrath of the people has been wholly directed against the judiciary. My acquaintance, sir, with the people gives me a very different opinion of what their disposition is, than to suppose that after the election of the present Governor, they directed their whole wrath against the judiciary, and had nothing to say to the disparagement of the executive. Why, we have only to take up a newspaper —no matter what county it was published in, and we shall see with what respect he is, and has been spoken of ever since he entered upon the discharge of his official duties. Sir, there have been more complaints made against the executive, than the judiciary, and that principally on account of the extent of his patronage—he being to appoint a few county officers. But, it is further objected, that the present tenure of office is odious to the people, and is in fact, a life office. I think, sir, with several of my friends, who have addressed the committee, that to call an office held during good behaviour, a life office, is an abuse of the term. A life office we understand to be an office out of which the incumbent cannot be removed during his life. But, an office held during good behaviour, is the reverse, for the incumbent may be ousted whenever misbehaviour or official negligence demands it. Sir, what are these offices? They are established, are they not, for the public service—to carry out the purposes of the government? For the service of the people, and for the welfare of the people? If the people are satisfied—if they are served properly by faithful and intelligent officers, what difference, I ask, can it possibly make to them, whether the tenure for which their public servants hold, be long or short? Now, sir, I should imagine all that the people require and desire, is to have faithful servants. If offices were to be regarded as rewards to partisans—as bounties to be given to friends, then there would be a reason for multiplying the channels of obtaining office by making the tenure a very short one. But when, sir, we consider that offices were not created for the benefit of individuals, but for that of the public—what difference can it make to them, whether the officers hold for a long or a short tenure, provided they perform their respective duties faithfully and assidiously. Here, then, is a limitation of office of that character; the officer is to continue in office so long as he behaves himself well. Here, I repeat, is a limitation only in regard to the public service, and the public welfare. To illustrate this with reference to some occupation of a life of labor, either as connected with agriculture, manufactures, or mechanics, I would say if an individual, who was desirous of having another to serve him in a certain capacity in some business requiring his skill and attention, and that man is engaged elsewhere profitably, he of course would not give up his situation to take another, without first making an inquiry "on what terms will you take me?" You want, for instance, an engagement as master mechanic, or overseer, or some occupation of that kind. The person to whom you have said this, might desire your services, and would say—"I will take you and keep you as long as you continue to do well." Now, would you, sir, consider this

offer as giving the employer a situation for life? If an individual in office misbehaves, he is liable to be tried, condemned and dismissed. Besides, too, he is subject to be removed, on many accounts, without being granted a trial. And, thus it is that one set of men are to remove another, and the representatives of the people themselves are to be displaced by the people. Every man knows the terms upon which he takes office. I take it for so long as I behave myself well, and I content myself to be judged—by whom? Your public agents—your representatives pass upon my conduct. Is this, sir, more than reasonable? According as a man may behave well or ill, is the decision of the representatives of the people, and the tenure of the office.

I will now, Mr. Chairman, ask the attention of the committee to the opinion and experience of our fellow citizens of other states and under other governments.

What is public sentiment in relation to judicial tenure among our fellow citizens in other states of this Union, similarly circumstanced with ourselves, having like republican institutions, and with a free people to govern and be governed.

The opinion of the sages and patriots assembled from every part of the United States, who formed the Constitution of the United States, is imperishably exhibited in its provisions in favor of the tenure of good behaviour in the judges of the courts of that government, as essential to the independence of the department, and the maintenance of constitutional government.

The Constitution of the United States, and that of Pennsylvania, is said to be formed as the model of the British government. Was there any partiality at that day for England, or its institutions? No;—having just got out of a protracted war with that country, prosecuted under circumstances of oppression and injustice, the prejudices of the country were against that government. Having derived our laws, many of our existing institutions from that country, having the same language and literature to a great extent, our statesmen were not to overlook the lessons of wisdom, to be derived from her history. But, sir, was Benjamin Franklin, Thomas Mifflin, James Madison and others, patriots, who formed that Constitution, to be suspected of being under British influence or under partiality to British institutions. They had not only condemned her wrongs and tyranny in the public council and legislative halls, but some of them at the peril of their lives, had encountered her armies on the field of battle.

The civil and protected rights of the citizen, and the principles of republican government was well understood at the adoption of the federal Constitution, and now discussed and maintained in the public journals, and by the writings of a Hamilton, Madison and Jay, is a work which is referred to at this day, as a standard one, of authority in political science, and which will be respected and admired as long as our republican institutions are maintained.

I have no partiality for any thing British; but, having derived our language and laws from that country, we with propriety looked to it for our forms of government. From the year 1680 down, there was a strong tendency in Great Britain to popular institutions, and a disposition to

ameliorate the condition of the people. Concessions were made to the people from the kings. There was a like tendency towards amelioration in other governments. Concessions were made in favor of popular rights, in 1701 and afterwards. Chancellor Kent, in his Commentaries, remarks on this subject: (1. Kent Commentaries, 467.)

"The importance of a permanent tenure of office to secure the independence, integrity, and impartiality of judges was early understood in France. Louis the Eleventh, in 1467, made a memorable declaration, that the judges ought not to be deposed or deprived of their offices but for a forfeiture previously adjudged and judicially declared by a competent tribunal. The same declaration was often confirmed by his successors; and after the first excesses of the French revolution were passed, the same principle obtained a public sanction. And it has now become incorporated, as a fundamental principle into the present charter of France, that the judges appointed by the crown shall be immovable. Other European nations have followed the same example; and it is highly probable, that as the principles of free government prevail, the necessity of thus establishing the independence of the judiciary will be generally felt and firmly provided for."

But, sir, we are told that the Constitution of the United States is not a model for us, and that it gives powers to the federal judiciary which do not belong to the judiciary of this state; and that the federal judiciary exercises a political power not belonging to the courts of this Commonwealth. I do not, however, know of any powers which they possess that are not also possessed by the state judges. There are some cases in relation to controversies between states and the construction of treaties which belong to the federal court, but those are not cases of political power; they are questions relative to the rights of property—to the rights of persons and things. If those judges are clothed with political power, it would be a reason why they should not hold their stations by the tenure of good behaviour. If they possessed a political power beyond the reach and control of the people and the other branches of the government, it would be a reason for limiting, instead of extending, their tenure. Sir, we have had presented to us the names of many individuals, as authorities for a tenure, limited by a term of years. The name of Franklin, has, among others, been presented to us, with all the commendations to which it is so justly entitled. But the evidence was so positive that Franklin did not support that tenure in application to the judiciary, that the gentleman from Philadelphia county, had dropped him as an authority. Franklin was no doubt in favor of the tenure of good behaviour, and he so expressed himself in his letter. He was in favor of the federal Constitution, was a member of the Convention which framed it, voted in favor of its adoption, and never expressed any dissent from the tenure of good behaviour provided by it. Dr. Franklin thus writes to Charles Carrol, Esq. May 25, 1789, on the subject of the federal Constitution:

"If any form of government is capable of making a nation happy, ours I think bids fair for producing that effect. But after all much depends upon the people who are to be governed. We have been guarding againt an evil that old states are most liable to, *excess* of power in the rulers, but our present danger seems to be(defect of *obedience in the subjects.*"

But giving up Dr. Franklin, the gentleman from the county of Philadelphia, (Mr. Ingersoll) took up Dr. Johnson, as an authority, because he expressed his disapprobation of the good behaviour tenure, conferred by the king upon the judiciary. Dr. Johnson is the last individual whose authority should be brought for the instruction of our republicans, in the distribution of the powers of government. He was a high toned tory, and wrote "Taxation no Tyranny;" and recommending the strongest coercive measures against the Americans. A pensioner upon the king, he was the advocate of power, and the authority of such a man ought to have little weight with us on this subject. If we must have a British authority, let us be excused from him, and take Dr. Paley, who was not only distinguished in moral science, but whose great mind embraced the whole compass of the sciences. I will read from Arch Deacon Paley's Treaties on Moral Philosophy, the following passage:

"The next security for the impartial administration of justice, especially in decisions to which government is a party, is the independency of the judges. As protection against any illegal attack upon the rights of the subject by the servants of the crown is to be sought for from these tribunals, the judges of the land become not unfrequently the arbitrators between the king and the people; on which account they ought to be independent of either; or what is the same thing, equally dependent upon both; that is, if they be appointed by the one, they should be removable only by the other. This was the policy which dictated the memorable improvement in our Constitution by which the judges, who before the revolution held their offices during the pleasure of the king, can now be deprived of them only by an address from both houses of parliament, as the most, regular, solemn and authentic way, by which the dissatisfaction of the people can be expressed."

Such are the sentiments of a man who was the subject of a king—that the judges ought to be independent, and, if they were appointed by one power, should be removable by another. The gentleman from the county, was also pleased to refer to the opinion of Thomas Jefferson. Mr. Jefferson was strongly opposed to the judiciary, after he was President of the United States, and the opinions referred to now by the gentleman were those which he expressed, after he had had occason to put the power of an independent judiciary interposing between him and his favorite objects. Before that time, not a word could be found in his writings, expressive of his opposition to the good behaviour tenure. Thomas Jefferson, with all his great talents and acquirements, was a man very much influenced by his personal and political prejudices, which were so strong and so much warped his judgment, that his opinions may be quoted on any side of almost any question. What, sir, were the opinions of James Madison, a man who commanded universal respect when living, and whose memory was held in reverence and veneration by every American. We find Mr. Madison lending his assistance to revise the Constitution of his native state in 1829; and we find him there, in favor of a provision securing to the judges the tenure of good behaviour and requiring two-thirds of the whole of the legislative body, for their removal. I might mention other high authorities in the different states in favor of the tenure of good behaviour. That tenure, as I can show, has been considered as an assential feature in a republican form of government. I will ask the

attention of the committee for a few minutes, to the proceedings of other states on this subject; and, when we look elsewhere for our authority, we should refer to those states which are placed in like circumstances with our own. I will not go to Arkansas and Michigan for a model of a judiciary, because they are new states, and composed of people who have come suddenly together, and strangers to each other. We are placed under very different circumstances. This is an old state, and our people are known to each other, with fixed and solemn habits, and accustomed to the same institutions. I look for the lights of experience to the old states, where the population, like ours, is dense—where are to be found a people assimilated in habits, and who have existing institutions. A new state cannot give instruction in government to an old one; as well might a young man, just started in life, recommend his rules of action to those who have gone through a long and a prosperous and honorable career upon a different system. Let us look for light to the old states.

Of the original thirteen states who adopted the federal Constitution, several have since revised their state Constitutions and modled them with all the lights and advantages of experience.

The state of Connecticut revised her Constitution in 1819; and though under her previous government, the judges were elected annually by the legislature, the tenure of the judges of her supreme and superior courts, was changed to that of good behaviour. Maine adopted her Constitution in 1819, and provided for the judges, a like of tenure of good behaviour. Massachusetts revised her Constitution in 1821, and established a like tenure. In the same year, the state of New York revised and amended her Constitution, making the tenure of the judges of the supreme and circuit courts during good behaviour. The judges of the county courts which are very inferior courts, and recorders of cities, were appointed for the term of five years.

In 1830, Virginia revised and amended her Constitution, but retained the term of good behaviour for the judges of her courts. Delaware did the same in 1831, and so did North Carolina in 1835.

Six of the original thirteen states have thus revised and amended their state Constitutions within a few years; and with all the lights of their experience, considered it most expedient, safest and best, that the judges who were to administer the laws, should hold their offices so long as they behaved themselves well, subject to removal for misbehaviour or other causes, by the legislature. In the tenure, and causes, and mode of removal, they differ but little from those now contained in the Constitution of this Commonwealth.

Two of these, Connecticut and New York, restricting their judges of their inferior courts, to a term of years. We are, however, told of the limited tenures of other of the old states. In Vermont, the judges are elected annually. But does any one wish to adopt that system here? If there is one member of this body in favor of it, there is certainly but one. In Rhode Island, two of the judges are annually elected. But Rhode Island, is still governed under a charter from King Charles II. and under the same charter, her legislature is chosen twice a year. That system is not proposed to be adopted here. But we are told that the judges in Rhode Island are continued from time to time. Upon inquiry as to the manner in which the system works in Rhode Island, I have learned, that judges

are reappointed from year to year by the legislature, because the salaries are so low, that there is no competition for the offices. It is difficult to find any person who will accept the office, and they are obliged to reelect the incumbent. But, if the salary were raised to a reasonable remuneration, there would be no want of persons to take it, and the changes would be very frequent.

Of New Jersey, he would say nothing because we have heard of the operation of the system there. In Georgia, they elected their judges for the term of three years. He had made a like inquiry of the operation of the system there, and he was told by an intelligent political opponent of his, a supporter of the present administration of the general government, that their system worked badly, and that they were desirous of remedying it. He now come back to the proposed amendments. Those amendments proposed to give different tenures to the judges of our courts —one tenure for the judges of our supreme court, and another for the judges of our courts of common pleas. Now he was not able to understand, why it was that the judges of the courts of common pleas, should not have a tenure as permanent as the judges of the supreme court. It is the judges of your courts of common pleas who are liable to be influenced by public commotion—by faction or by the power and influence of parties litigant. They are men too, who must decide upon what is before them, at the time it is brought before them ; whereas, judges of the supreme court hear a cause argued, and if they are not prepared to decide upon it, they hold it over till they receive farther information, or hear farther argument of the case, free from any popular excitement. The judges of the court of common pleas, however, are passing upon the rights of individuals and parties, in the presence of the parties, and with all those influences around them, which might make a man who held a dependent situation, swerve from his duty. Why was it that a judge thus situated should have a tenure different from that of the judges of the supreme court ? Even if he was in favor of limiting the tenure, he would not make the tenure of these judges different from the supreme judges. Why, sir, these judges have in their charge the whole criminal jurisprudence of the country. They have the power of passing upon the lives and the liberties of your citizens without even having the cases brought before the supreme court for revision. He could see no good reason then, for making any difference in the tenure of these judges, because in his view it was just as proper that the one should have an independent tenure as the other. The independence of the judges of the courts of common pleas, were just as essential to the rights of the citizens as the independence of the judges of the supreme court. He had occupied more of the time of the committee than he had expected, and would now draw to a close. The subject was one of interest to us all, it was one of interest to the whole people of the Commonwealth, who are now on the stage of action, and of interest to those who are to come after us. We are now passing, not only upon the rights of men of high character, but we are also passing upon a constitutional provision, which may be for good, or it may be for ill, for those present as well as those to come. He might be in favor of making some salutary changes in the Constitution of our state, but he was not for pulling down the pillars of that Constitution, for the purpose of building up some structure of his own fancy, or that of the fancy of some one else. It was to no purpose

that we distribute the powers of the government among three departments, if we are not to have an independent judiciary department. If you place it at the foot of the executive by making it dependent upon him for existence, your distribution of the power of the government is a fallacy, and the independence of your judiciary a mere mockery. Sir, the hands that hold the scales of justice should be firm ones, and he would do nothing to enfeeble them, nor was he willing to deliver over the scales of justice, to eyes that will look to the appointing power, when they ought to look to the Constitution and the laws.

No gentleman rising to speak to the question, the Chair inquired if the committee was now ready to take the question on the amendment as amended.

Mr. Forward rose and said, that we all knew that this subject must receive more discussion. The grounds of argument, have all yet to be travelled over again. Those arguments which we have heard must be answered—he spoke of both sides—and he thought we might as well continue the discussion upon the amendment as it now stands. Some perhaps would vote for it instead of something worse. For himself, he felt exceedingly anxious about the supreme court, and had desired to say something on the question, but feeling indisposed he thought the committee might as well rise, and let the debate be continued to-morrow. Mr. F. then moved that the committee rise, but withdrew the motion at the request of.

Mr. Dickey, who suggested that the committee had better take the question on the amendment as amended, and then let the discussion be continued after that, as the whole merits of the question would then be open.

Mr. Fuller said, he had understood on Monday evening, after the vote was taken, on the amendment of the gentleman from Beaver, that some accommodation was likely to be made between the two extremes of parties on this question in the Convention. He had understood that a motion would be made to reconsider that vote in case the gentleman from Beaver would modify his amendment, so as to have the supreme judges appointed for twelve years, the president judges of county courts for eight years, and the associate judges for five years, and this he believed was likely to be done. He had understood from a number of gentlemen that this accommodation was likely to be made. We all know that the amendment of the gentleman from Beaver, was sprung upon the committee unexpectedly, but without desiring to snatch the laurel from that gentleman's brow, who was ever industrious and vigilant, and for which he was deserving of great credit, yet he thought for the sake of compromise on a question like this, that the gentleman would yield something. He hoped that the motion to reconsider would be made, and that the gentleman would modify, or that the committee would vote down his amendment. If such an accommodation would take place, he believed the proposition would receive three fourths of the votes of this Convention or more. Now he believed it was essentially necessary that such an understanding should be had, because if we pass a proposition on this subject, by but a small majority of the Convention, he was extremely doubtful whether the people of Pennsylvania would be satisfied—certainly not so much so, as if it was passed by a large majority. We have seen peti-

tions presented to the legislature on this subject for many years, and if the Convention rejected all amendments to the Constitution in relation to the judiciary, he ventured to say that your legislative halls will be filled with petitions calling for another Convention. Then why not come to some accommodation upon this matter. If the conservatives had conceded that the tenure of the judges should be limited, he thought we ought to be able to agree as to the time. In relation to this matter, it appeared, that he was not so much mistaken, when he offered a resolution to test this question on the tenth of July last. Gentlemen then told him that it would take a month's discussion before they could take any vote, yet here we have seen them with only six or eight hours discussion, come up and vote on a proposition to limit the tenure of the judges, and even the gentleman from Allegheny, (Mr. Forward) had voted for it. It is true the principle was conceded, but he considered it only partially conceded. Sir, a fifteen years tenure may pass for a limited tenure in the letter, but in the spirit it will not do. If judges of the supreme court should be fifty or sixty years when they are appointed, they cannot possibly expect to be reappointed; but if it is fixed at ten years, then those judges who are appointed at fifty or sixty to the supreme bench, can either be approved or disapproved when their term expires, and this is one of the great ends which we aim at. He did not profess to be so capable of discussing this question as other gentlemen who had a more extensive knowledge of the subject, but he believed it was, at last, but a plain practical question, which did not require of us, so much legal knowledge to make us capable of discriminating the right side from the wrong, as some gentlemen seemed to think it did. There was to his mind nothing more than a plain common sense principle involved in it, which every man could comprehend. He should like to know, whether a judge who was appointed for a short term of years by the Governor and senate, would be made more dependent upon the Governor and the people, through him, than he ought to be. His whole dependence would be on the Governor, who would doubtless make his appointments in accordance with the wishes of the people of that district, and he would ask gentlemen, if this was not in strict unison with every principle of our republican institutions. The Governor is elected to carry out the will of the people, and the people in these matters are the proper judges. He apprehended that there were but two points to be attained in this matter. The first was to make these judges impartial in their judicial decisions, and the second was to make them responsible to the people for their acts. If you wish to make a judge impartial, put him in a situation to make him impartial—put him in a situation that he will know that the eyes of his fellow citizens are upon him, and that they will scan closely all his acts—make him feel that the public require of him strict and impartial justice—and make him feel that he is responsible for his acts. If this was done he apprehended that the whole matter would be fixed. It was in vain to tell him that men would act more impartially, by being elevated beyond the reach and control of the public voice. You might as well tell him that the Governor or your representatives would act more impartially, if they were made to hold their situations for life. It has been contended, by some gentlemen, that the farther you remove judges from the people, the more independent they will be. It might be that they would be independent of the people, but it did not appear to his

mind that they would have any more of that kind of independence, which every judge ought to have. The fact is, that all our former history shows, that the farther you remove a judge from the people, the less is to be expected from him. It has been contended that judges will be operated upon in the trial of cases between a rich and powerful and a poor and humble citizen, and that this is an objection to having them in any way dependent upon the public voice. Now, gentlemen must recollect when they urge this argument, that the parties, or the rich and powerful party, is not the ordeal which the judge will have to pass. He has to pass the ordeal of the people—the mass of the people —the whole people, and we all yield our assent to the virtue and the intelligence of the people, and we all know their readiness to sustain the supremacy of the laws, and uphold justice; therefore, if injustice is done a poor and humble suiter by the decision of a judge, the people in the immediate vicinity of that man, will know how to appreciate it, and the judge will be brought to feel the force of public sentiment, when his term of office expires. A judge, therefore, will have nothing to fear in passing the ordeal of the people, if he has kept justice on his side; but if he has not, he may have just cause to expect his removal. But say gentlemen, party spirit is such that judges will be swept from the bench, to make room for party favorites. This he believed to be a mistake. It never has been the desire of the people of this Commonwealth, to have political judges. All they expect of them is to deal out justice according to the strictest rules of law and right, and whilever a judge continues to do this, it will never be inquired of him, what party he belongs to in the political struggle of the day. One gentleman on the other side has contended, that to make judges independent, or at least, to get independent men for judges, you must give them large salaries, because, no lawyer, who is making four times as much as the judge receives, will give up his practice at the bar, for a seat on the bench; and another gentleman on the same side, has argued that there will be a scramble for the office, whenever the term of a judge expires. Now, these contradictions in this argument, he would leave gentlemen to settle between themselve ! It appeared to him however, that all that was necessary was, for judges to have in view the approbation of their fellow citizens, which he would receive if he conducted himself according to the principles of right and justice, and be reappointed, and if he did not, he would not receive their approbation, and would be removed. The people were the best judges in this matter as well as all others. Is it to be contended, that the people are not capable of judging of the competency of a judge of a court, if they have had a trial of him for years. Why, if they were not capable of judging in his, they were not capable of judging in the case of a governor or president or any other of your officers of government.

To make a judge perfectly independent, we do not want him to be intirely independent of the people. We want him, on the contrary, to be dependent on the people. All our officers, of every grade and description, ought to be dependent on the people. Such, Mr. Chairman, is the spirit and the meaning of all our institutions. This free government, under which we live, is founded on the will of the people, and it accords with the spirit of that free government to say, that all those who hold office under it, shall hold it subject to, and dependent upon, the will of the people. And so long as the purity of the people continues as it now is, so

long as information, and light, and intelligence are shed abroad among them, there is no ground to fear that a judge will be put out of office, for the faithful discharge of his duty. Sir, we need not anticipate any such result. If he is capable and honest—a man of talents and integrity, my word for it, there will be no fear that he will be turned out of office, by means of any improper influence. The present tenure of the judges is, to all essential purposes, a life tenure. I am aware that much has been said against the application of this term ; it is a term of odium—yet, in principle, this is a life tenure, and, as such, is incompatible with all the institutions of our government. It is incompatible with the free principles on which our government was organized. But so far as is conceded by the amendment before the committee, I am willing to go ; that is to say, if nothing better can be got, I will vote in favor of the tenure for the term of fifteen years, although I believe there are many of the reform party in this Convention, who will not go for it. I put it to the friends of reform, whether it would not be better to determine this great principle at once, by making a compromise, inasmuch, as the conservative party have already made a concession. Suppose we were to agree that the associate judges should hold their offices for the term of five years ; the president judges of the court of common ples, for the term of eight years; and the judges of the supreme court for the term of twelve years. The gentlemen who are willing to go for the term of fifteen years, for the judges of the supreme court, would go for the term of twelve years, as a matter of expediency, because there is no principle involved. They might, therefore, vote in favor of such a compromise, and by these means we might cut off a protracted debate of three weeks or more. I do not myself entertain a doubt that an arrangement of this description, will meet with the approbation of the people of this commonwealth, although it may not be very gratifying to those gentlemen who have prepared long speeches, and will thus be deprived of the opportunity of delivering them. I, for one, have none such to make. I am ready to act and to vote. It will certainly be a disappointment to me, as I have no doubt it will to others, to lose the benefit of the information and research, which would be exhibited in the full discussion of this very important question ; but the legislature is to meet in the course of five weeks from this time, and it is desirable that we should bring our labors to a close before they assemble. There is not the remotest chance that this desirable object can be accomplished, if this discussion is allowed to proceed. The discussion would continue as though the principle of the life tenure had not been conceded by the other party, whereas, in fact it has been conceded.

I have one remark to make, Mr. Chairman, in reply to the opinion which has been expressed by my honorable friend from the city of Philadelphia, (Mr. Hopkinson) in reference to a memorial which I presented to the Convention the other morning. He appeared to think that the memorial was not worthy of the attention or the notice of this Convention, because the president of the meeting was known to none, and the secretary of the meeting was still less known. And, after making this assertion, the gentleman asks who is to regard such a memorial ? I felt the force of these remarks, Mr. Chairman; I felt that the reflections were injurious. But I will do the gentleman from the city the justice to believe, that he did intend no injury, in the remarks he made ; and that he intended no more than to say, that this was his own individual sentiment ;

because we know there are a certain class of politicians, who hold the opinion, that petitions coming from county meetings, and such places, are not much entitled to respect. Be this as it may, such are the very channels through which information and a knowledge of the wants and wishes of the people ought to come to the ears of this convention—I mean through county meetings, and through petitions and memorials. This is the way to procure correct information. There is only one other way in which more correct information can be procured, and I suppose it is not necessary for me to remind the Convention, that that one way is through the ballot-boxes. I will not, however, detain the committee any longer. I have made these remarks, simply with a view to urge upon the minds of the members of this body, the propriety of coming to some compromise, so that we may be able, with as much unanimity as possible, to send this amendment to the people in such an acceptable form, as that they will cheerfully adopt it, and thus prevent a mass of memorials from being poured in upon the legislature, consuming their time, and harrassing their deliberations, for many years to come. All legislation, Mr. Chairman, is a matter of compromise; and the matter now before us, is one in which, I conscientiously believe, it is the duty of this Convention to come to some compromise or other. Entertaining this belief, I am willing to throw out of view my own immediate feelings and wishes, and to meet on grounds which may be made acceptable to both parties. I believe that the reform men in the Convention, are in a majority on this question, of from twenty to thirty; and that if any gentleman will, on to-morrow, make the effort, the whole matter may be settled at once, and thus a discussion will be cut off, which, however profitable it might be to the listener, would yet be very undesirable, when we consider the condition in which the business of the Convention is at present placed. The people of the commonwealth will be much better pleased that we should dispose of the amendments, and adjourn as speedily as possible, than that we should remain here for weeks or months, in listening to long speeches. I should myself be pleased to hear the discussion; there are some facts in my possession, which I should be happy to have an opportunity of presenting to the calm reflection of this body. But we have not time—we should proceed to the prompt discharge of our business, so that we may return home and render an account of our trust to the people who sent us here.

The true and only matter at this time before us, is to bring the judges so far home to the people, as that the people may have the power of passing their judgment upon them. If the judges shall have discharged the duties of their stations honestly and faithfully, there is no reason to doubt that the people will continue them in office; and if, on the contrary, they have not discharged their duties honestly and faithfully, the people will discharge them. The greatest reward which a good judge can covet, is to be approved by his fellow citizens, not only for his private virtues, but for the manner in which he has discharged his public duties, and that so his name may be handed down to posterity. Men are ambitious on this very point. But does the motive to an honorable and righteous discharge of duty stop here? No, sir, it goes much farther. It is a strong incentive to a man, to stand approved here among his fellow men, and to know that his name will be handed down to posterity. But there is a higher incentive than this. He will stand approved before his Creator,

These, Mr. Chairman, are sufficient inducements for a judge to act uprightly and righteously ; and if these inducements are not sufficient, I know of nothing on earth that will be. Your laws—your tenure of office—your high salaries—all will not do it, if these other motives fail. Your high salaries, would only lead him to a course of life, which would weaken the force of all these incentives. Your high salaries, in nine cases out of ten, would lead a judge, or any other man, to pursue a voluptuous, extravagant and improper mode of life ; they would produce luxury, indolence, and all their concomitant evils. And unless you adopt the principle of making pensioners of your judges, as has been observed in the progress of this discussion, they would finally become a nuisance to society. A judge, and every other man, who holds an office under your government, should receive a fair compensation for his services—such a compensation, I mean, as will enable him to possess the proper means of life and comfort for himself and his family, not to live extravagantly, but to live according to the general scale of economy, practised by the people among whom he lives. This is the way in which to keep up that morality and purity in the administration of your government, without which, no government can maintain any sure or solid foundation ; and for these reasons, the compensation to your judges, while sufficient for a competency, should never be suffered to become extravagant.

Mr. Hopkinson said, that he hoped the committee would indulge him, whilst he made one or two remarks. The committee was aware that there were now two questions before them ; one of them, a primary question between the tenure of good behaviour, and a tenure for a term of years, and the other, a question between a term of years ; or whether that term should be fifteen, twelve, or ten years. This latter might become a primary question hereafter, although not properly so when the debate arose. On this primary question—namely, as to the tenure during good behaviour, and the tenure during a term of years, only three elaborate speeches had been made. And why should not other gentlemen be heard ? The gentleman from the county of Fayette, (Mr. Fuller) had himself been entering into an argument, even while apparently deprecating any more speech making. He (Mr. H.) had seen that gentleman open his desk and take out his notes. The gentleman needed no preparation. He (Mr. H.) said this in sincerity. He always listened with pleasure, to his (Mr. F's.) observations. But now, said Mr. H., the gentleman states that he is in favor of compromise, and that he desires to have no more speeches. Why shall we not hear both sides ? I submit to the Chair, that the gentleman from Allegheny, (Mr. Forward) is entitled to the floor.

Mr. Fuller said, he did not know that the gentleman from Allegheny had a right to the floor.

Mr. Hopkinson. The gentleman from Allegheny, (Mr. Forward) rose and said that he wished to be heard, but that he was not well enough to go on this evening, and, as a matter of courtesy extended to all, high and low, he should have had the right to go on to-morrow. The gentleman moved that the committee should rise. On that question, a sort of conversation ensued, which resulted in a speech from the gentleman from the county of Fayette, (Mr. Fuller.) I believe that the gentleman from

Allegheny, had a right to the floor if the committee did not rise ; and that if the committee did rise, the same gentlemen would be entitled to the floor to-morrow morning. The gentlemen on the other side, have been heard against the good behaviour tenure. Why should the gentleman from Allegheny be denied a hearing ?

Whilst I am up, I will correct a mistake, into which the gentleman from the county of Fayette, (Mr, Fuller) has fallen, in relation to the memorial presented by him. I made no allusion to that memorial. I stated expressly that I made no allusion to it. I merely spoke of past transactions. I could not speak with disrespect of that, or any other document, if presented by the gentleman from Fayette.

A discussion, of rather an excited character, here ensued, having reference to the right to the floor, in which Messrs. FULLER, HOPKINSON, FORWARD, DICKEY, STURDEVANT, CLARKE, of Indiana, STERIGERE, and SERGEANT, President, participated, and which resulted in a successful motion, by Mr. STERIGERE, that the committee rise, report progress, and obtain leave to sit again : And,

Thereupon the Convention adjourned.

FRIDAY, NOVEMBER 3, 1837.

Mr. COPE from the committee on accounts reported a resolution on the subject of the expenses of the Convention which was agreed to.

Mr. COCHRAN, of Lancaster, moved the second reading and consideration of the following resolution, viz :

Resolved, That a committee be appointed for the purpose of ascertaining and reporting to this Convention, previous to the ——— instant, the most eligible place for the sessions of this Convention during the sessions of the state legislature.

The question being put, the motion was agreed to, and the resolution having been read,

Mr. COCHRAN modified the resolution so as to read as follows :

Whereas, The Legislature will be required to meet in this place on the first Tuesday of December next, and it is apprehended that this Convention will not have completed its labors by that date : And whereas, two bodies so numerous as the Legislature and Convention sitting in Harrisburg at the same time, will probably occasion inconvenience to the members of both bodies and obstruct their respective action ; therefore,

Resolved, That a committee be appointed to inquire and report, first, whether it will be expedient for this Convention to remove from Harrisburg before the time for the meeting of the Legislature ; and secondly, if it be expedient so to remove, then to ascertain and report to what place, and when it will be proper for the Convention to remove.

The resolution, as modified, was then read a second time and agreed to. The committee was ordered to consist of seven, and the following

delegates were appointed of such committee: Messrs. COCHRAN, FLEMING, CUNINGHAM, RITER, HAYS, SCOTT, and YOUNG.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'SHERRY in the chair, on the report of the Convention to whom was referred the fifth article of the Constitution.

The question being on the amendment of Mr. WOODWARD, as amended on motion of Mr. DICKEY;

Mr. FORWARD, of Allegheny, rose, and said he did not know that he should have presumed to trespass on the time of the committee, but for his anxious desire to bring to their notice certain resolutions, which he had submitted, a few days since, and which had been printed, and now laid on their tables. By attending to these resolutions, it would be seen that the scruples which influenced his mind and the mind's of some other members, might easily be removed. After all that had been said, it came to a dry matter of fact. Was this tenure of good behaviour sufficient to secure a remedy in case of the misbehaviour of a judge? He had no desire to censure any judge who did his duty faithfully, ably, and honestly. Every one who had spoken in favor of a limited tenure, had admitted the object to be the correction of abuses, not the removal of able and honest men. He took this to be a point conceded, an admission which no one was disposed to contradict. He did not intend to occupy a day, or a half a day, in delivering what he proposed to say. Probably, he might occupy an hour, or an hour and a half. He did not intend to go into all the various topics with which other gentlemen had entertained the committee. His view of the subject, would be that which was presented by plain common sense. He desired no other; he would scarcely listen to any other. He had not come hither with any disposition to meddle with the tenure of the higher courts. In reference to the lower ranks of the judiciary, he regarded the present system a failure. He believed that, in some instances, the secondary courts had been perverted to dishonorable purposes. He had an unutterable disgust to political judges: and he was anxious to check this party spirit among judges. If nothing else would effect this, he was even ready to break through their tenure of office, which, otherwise, he would be disposed to hold inviolable forever. He would briefly review the ground. We had voted to elect justices of the peace, and he supposed many gentlemen were committed on the question of limited tenure in the higher branches of the judiciary. Although they should retract, still they had surrendered themselves to an elective judiciary. In reference to the magistracy, the opinion of the Convention had decided, and the course taken, was perhaps, the best. The reasons are obvious, although he had not heard them suggested by any. In reference to the magistracy, how did the tenure influence the intercourse of office. The inferior magistrate supported himself by his fees: having no salary, his income depended on the amount of his custom. It must then be obvious to every mind of the least reflection, that this very tenure of good behaviour may be relied on by him for purposes, foreign and inimical to the public interest. He might shelter himself behind that tenure for sordid purposes. This was

a strong and weighty consideration, which could not apply to the supreme court, but did apply to the magistracy. Your justices of the peace were not quite satisfied with the offices they hold. They had their ulterior aspirations and views, to which many office holders made their offices a passport. Did any one doubt this? Were not these men aspiring to become members of the house of representatives—of the senate —of congress, or to fill any other profitable stations which might offer themselves? Was not this a feeling operative in the half or the whole of them? Were we not convinced that they cherished these views, and did not this fact admonish us that the tenure of good behaviour may, in the hands of the inferior magistrates, be devoted to improper purposes? Was not this the case with the inferior courts, and among the justices of the peace, in particular? The secondary courts too, are not free from this charge. These reasons had their affect on all who had wished to change the term of the inferior judges. They were politicians, and are to be found at all the public meetings; they possessed weight and influence, with few exceptions, and always arranged themselves on one side or the other, with the parties which divided the country. They were the magistracy to whom the poor and the rich must appeal, and you would find two-thirds or three-fourths of them arrayed in party conflicts. Did he speak the words of truth and soberness, or not? He did not go the whole length, which some others did against the magistracy. Some of the body were good, while others engaged in the political strifes of the day might not be. They were men of as much ambition as ourselves. If these views were correct as to other parts of the judiciary, could they be extended into the higher branches? Look at the courts of common pleas and the supreme court. He was not disposed to disguise any thing which was pertinent to the subject. He owed it to his constituents and the country, to speak plainly, and not to shrink from the truth. He would say, therefore, and he knew it to be true, that no small portion of the judges of our secondary courts are to be found among our most active politicians. That he would concede to the gentleman from Luzerne, and he admitted it to be a weighty consideration. The judges of the secondary courts are most active politicians. Where did you find them? At all the country meetings. There was scarcely a political meeting at which a judge of the secondary court did not preside. They participated in the correspondence, and were always armed, vigilant and sleepless, in reference to the gubernatorial nominations. Their names were to be found appended to partisan, inflamatory addresses. The gentleman on the other side were entitled to the full benefit of this admission. He was willing to concede that the virtue of this good behaviour tenure had failed, in some respect, in reference to the judges of the secondary courts. This belief was impressed on his mind when he came to this Convention; and he had resolved to attempt to impose some check on the pervailing abuse. How was it with the supreme court? He was not prepared to say that any one of the judges of the court was a political partisan. There may have been cases there. They may in some cases, have yielded themselves to the vicious current of the times;—they may have been tinctured with the disease which had infected the whole country, turning the heads and poisoning the hearts of our best citizens. The judges may have yielded to this infection. But not that he knew, were they political partisans. If they were, the views he had presented

were strikingly applicable to them, as well as to the secondary courts. Look at the tenure for good behaviour. He would go with gentlemen to correct all the evils which could be pointed out. Let us look at the tenure for good behaviour, and see if we can find a better security in a term of years, or if any security of a nobler and better kind, can be suggested to the Convention. He had assumed, at the outset, that no man desired that any judge should be removed whose duties were faithfully and honestly performed. The gentleman told us he presumed such could not be removed, only in case of a spasmodic movement. In ordinary times, and under the ordinary action of the government, the judge who performs his duty, will have a right to look for a renewal of his commisson. The country would be best served by such renewal. This was conceded on all hands. How then could the good behaviour tenure operate in that case? It was obvious from the very terms of the argument of gentlemen, who advocated the change. that if guarded by a due responsibility, by which a judge would be readily accessible to the people, and easily corrected, in case of misbehaviour, that all the purposes of a limited tenure are now completely answered and accomplished, without the risk of any of the abuses which must grow out of that tenure. The question was a question of responsibility. The complaint is, that you cannot reach the idle, the incompetent, the misbehaving. You cannot reach these, it is said, therefore, the only remedy is, at stated periods, to return the commissions to the Governor. This had suggested to him a view which seemed to present a remedy better than that offered by the gentleman from Luzerne, as to the supreme court. Let us look at the terms of the resolution and see if they produce the desired effect. The first of the resolutions which he had submitted was as follows: "That the judges of the supreme and superior courts, may be removed by a vote of two thirds of both branches of the legislature." The arguments of the gentleman from Luzerne, (Mr. Woodward) and the gentleman from Philadelphia, were based on the assumption, that if abuses existed, there was a difficulty in effecting a removal of the judges, because of the discrimination between offences impeachable, and those which were not impeachable. We all know the circumstances of this distinction. If articles of impeachment weie exhibited without sufficient ground, there could be no removal. If removal were sought by address of the legislature, and the cause was found to be an unimpeachable offence, there could be no action by address. We had often seen embarassment produced by questions of this sort. By the adoption of the first resolution which he had offered, every difficulty of this kind would be removed: and so far as the arguments of the gentleman from Luzerne, and the gentleman from Philadelphia, had any weight derived from this circumstance, they would be neutralized. He would permit the two houses to remove a judge for any cause. He would agree that it should be done without the participation of the Governor. The Governor appoints to office, and would be reluctant to believe or admit that he had appointed an improper character. He might have an interest in sustaining a judge because he had put him into office. Therefore, he should be excluded from the tribunal to which a judge would be brought. The next of his resolutions was in the following words:

"*Secondly.* That no person who is or shall be a judge of the supreme or any inferior court, shall be eligible to any other office in this Common-

wealth; that this ineligibility shall continue until the expiration of two years from, and after he shall have ceased to hold his office; and that if any person holding the office of a judge of the supreme or any inferior court of this Commonwealth shall be a candidate for any legislative, executive, or judicial office in the government of the United States, his office shall be thereby vacated."

Mr. F. here read a passage from Sir William Jones, shewing the harmony of sentiment between that writer and himself, on this point, He would not suffer a judge to be translated from one office to another; nor would he permit the office of judge to be bestowed indiscriminately. The chief justice had not been ordinarily selected from the bench, but from the bar. What had produced all the alarm among the people of the country on the subject of the judiciary. Was not the general complaint that they were politicians, candidates for this and that office, and that one had been a candidate for the presidency. We are not to be made answerable for that. There is no power to remove for that cause. What made the justices of the peace politicians? Because they have views beyond their offices. Their eyes are fixed on some more lucrative stations. They avail themselves of the facilities afforded by their offices to secure others of a more lucrative character. Was not this the fact? Suppose that we deprive these persons of this hope, by making them ineligible not only while in office, but for some time afterwards, for any other office, so as to weaken the inducement to abuse the offices they hold; this would supply a remedy for the evil. It might be asked—why would you disqualify these persons from accepting office under the United States. The answer was this. To obtain office under the United States, they must conciliate the people at home; they must have the confidence of the dominant party at home. Here was the mischief, because to obtain the favor of the party at home, the magistrate might be tempted to prostitute his office. There was also another reason which had operated on his mind; and that was the difficulty of reaching a judge who misbehaves, so as to enable the legislature to act upon the case. The individual who makes the charge must come to Harrisburg in the inclement season of the year, notwithstanding his natural dislike to leave home at such a period, and this must be productive of great inconvenience to one who wishes to prosecute. He desired to let a judge know that he could be brought to account on easier terms. He did not see why the prosecutor should be compelled to attend here on his own expense. He did not see why the witnesses should be brought here, unless the party accused should require it. For this he had made provision in his third resolution, which was expressed in the following terms:

"*Thirdly.* The legislature shall provide by law for the appointment of commissioners to take the depositions of witnesses in cases of complaints made against any of the judges of the supreme or inferior courts, and that the depositions of witnesses thus taken may be read on the trial of the party accused, unless he shall specially demand their personal attendance."

And why not do this, by the adoption of a general rule. Why not let the people know that the way to redress, is thus opened to every one who believes himself to be wronged? Why not allow the accused to meet his accuser face to face? Let him call for his witnesses. In nine cases out

often, all beneficial purposes would be answered by taking depositions, and allowing witnesses to remain at home. Why, in such cases, should they be brought here?

This, then, is my plan for drawing closer the bonds of union between the judges and the people. I would abolish all the existing distinctions between offences impeachable and offences not impeachable. I would allow a judge to be subject to removal in any case, by a vote of two-thirds of the legislature, with the concurrence of the Governor. This would separate at once the appointing power from that tribunal which is to pass judgment. I would declare a judge to be ineligible to any office during the existence of his commission, and for a reasonable period after its expiration. This would secure all of us from those ambitious aspirings which are so apt to reach the mind of a judge and to trouble him in the course of his duty. Judges will then cease to be politicians—and thus, by bringing them within the reach of every man that is wronged, at a very little expense and trouble, a full responsibility is secured. I confess that I should feel myself perfectly safe in the hands of a judiciary which should be thus constituted and whose responsibility should be thus amply secured. I am entirely willing that my fortunes, and the fortunes of all those who may descend from me, should be submitted to the arbitration of a judiciary thus constituted, and thus guarded by this strong responsibility. And now let us look for an instant at the project in view. I have given to this matter my best consideration, and I think I have weighed it in all its bearings fairly and dispassionately. I have listened with great attention to the argument of the gentleman from Luzerne, (Mr. Woodward) and also to the argument of the gentleman from the county of Philadelphia, (Mr. Ingersoll.) I think I have made up my mind not only on grounds satisfactory to myself, but upon grounds and reasons which should influence every man who thinks candidly and dispassionately on this question. Let us look at it.

I must commence this task, Mr. Chairman, by exploding some of the heresies (and I use this term without the remotest design to give offence in any quarter) which have been brought into this discussion.

I have been told that the ground of difference between the two parties in this discussion, is, that on the one side there is a confidence in the people, and that on the other side, there is a distrust of the people. Confidence is the word, and distrust is to be repelled as an old fashioned intruder, not suited to the spirit of the age in which we live. Confidence in the people! Mark, Mr. Chairman! The judge is to lay his commission at the feet of whom? Of the people of Pennsylvania? No such thing. He is to lay his commission at the feet of your Governor. Confidence, I repeat, is the word—and confidence in the people. Now, let the gentlemen who have pursued this argument, meet this question fairly with me—why is it that they have no confidence in the representatives of the people? Look at the attempts, which have, from time to time been made, to remove judges by address. Do you call these things by the name of trials? They are mockeries—they are worse than scarecrows.

Will you place no confidence in men appointed by the people? Do you propose to give all confidence to the Governor, and none to the legislature? If the gentlemen's own argument is worth any thing at all—if

they themselves do not practice the very thing which they impute to us, they must admit that there is even now, a competent redress. Confidence in the Governor! They put confidence in the Governor; while I on the contrary, put confidence in the people. They put a blind and implicit confidence in the Governor. How can they use this argument, when they know perfectly well that the representatives of the people are willing at all times to hear and dispassionately to adjudge all complaints which may be made against a judge? But look at the history of this matter.

A friend of mine who had been a member of the state legislature for several years, had adverted to a case with which I was not previously acquainted. He says that there have been eleven complaints and impeachments against judges in the state of Pennsylvania. Out of this number, two of the judges were convicted and removed. These were Judges Anderson and Cooper. Three judges also resigned—by some understanding or compact—made for the purpose of shielding them from the ignominy of removal by the two houses of the legislature. So that we find there are five cases out of the eleven which have been referred to, where this mode which has been so much hooted at, and treated with such signal contempt, has given to you, substantially and to every practicable purpose, five convictions, where there have been only eleven accusations.

Mr. Chairman, it is not true that the legislature of your state has turned a deaf ear to the complaints which have been made against the judges. I say it is not true as a matter of history. The very reverse, at all events for some length of time, was true—that these complaints were rather invited, than passed over slightly when made. There was a popular odium held up over the heads of the judges. The judges were threatened; it was a popular kind of enterprise to make these complaints, and they were not discountenanced by the legislature: There is a gentleman here present, who knows well the truth of this assertion. The legislature of Pennsylvania, I do not doubt, ought to stand acquitted of all the charges which have been made against them. I believe that they did perfect and entire justice, according to their best knowledge of the facts. I believe that they administered the law in mercy and in equity; but that they were partial to the judges, or willing to stand between the judges and popular justice, I do not believe. I feel confident that the charge, from whatever quarter it may come, is not true.

Then, Mr. Chairman, if the positions which I have taken, be correct, this tribunal, which has been so much complained of, and so much decried and abused, is not after all undeserving of our confidence. I am willing to admit that it has not answered all the purposes which would have been desirable. If my own views, in relation it could be carried out, I would have a more ready access to it, and more convenience; but I would not convert it merely into an agency, although I would break down the barrier which separates impeachable offences from offences which are not impeachable.

What were the difficulties arising in those cases which were brought before the legislature? They were just what I have stated. All the old members of the legislature, who now hold a seat on this floor, will bear witness to the truth of this. There were difficulties—there was some

special pleading in the way; and those might escape, who, perchance, deserved a very different fate. But I offer my views, and I hope they may receive a patient attention at the hands of this committee—because I believe that, if they should be adopted, they will secure us from all these phantoms, shall I say? from all these imaginary evils which are supposed to result from the tenure of good behaviour. If I thought otherwise, Mr. Chairman; if I thought that the judges would continue their political career—if no other mode offered, but removal by the Governor, I declare I would submit to it. I have, however, many scruples in my mind against the power which we are about to submit to the Governor of the state of Pennsylvania. Let us look one moment at the executive government of this state, and let us see what it is. Let us see what confidence should be awarded to it. I find the following language held in this Convention, by the gentleman from the county of Philadelphia, (Mr. Earle) to which I ask the attention of this body. I read from the "Daily Chronicle," at page 248:

"While we interposed a check, we should not create a tyrant—we "should not enable a Governor, misrepresenting those who elected him "—or a Governor chosen by one third of the people, as might happen "under our Constitution, to overrule, for three years, the deliberate wish "of a large majority of the people. It had been said, in the debate, that "the Governor represented the wnole people; we know it is not neces- "sarily so. If fifty-one members of assembly out of one hundred, may "misrepresent them, is it not still more likely that a single individual "may do it? And one third of the senate chosen for the term of three "years, by a vote of one sixth of the people, or thereabout, might over- "rule the majority of the senate, the representatives and the community "for a long time, unless we put limits to the operation of the *veto*. He "would therefore, permit a majority of the senate and two-thirds of the "house of representatives to overrule it in the first instance, and a major- "ity of both houses to do it at the end of a year, and after a new election "by the people, with the subject fully before them."

Here, continued Mr. F. is an argument against entrusting power to a Governor who is not deserving of the confidence which we have been accustomed to impart to him.

Another gentleman, a member of this Convention, (Mr. Woodward, of Luzerne county,) says, at page 264 of the same paper:

"That contracts between the executive, when a candidate, and unprin- "cipled partisans had been made in Pennsylvania, he had no doubt."

That is to say, continued Mr. F., such contracts have been made by the Governor, to whom our confidence is to be exclusively appropriated, and in relation to whom, if we entertain a doubt, we are supposed to have aristocratic principles.

But again, sir. Another gentleman, also a member of this Convention, (Mr. Brown, of Philadelphia county,) says, at page 28 of the same paper:

"He was for stripping the Governor of his patronage, and he thought "it would be but mockery to talk of doing this by only uniting the sen- "ate with him. He would not have any power that could be exercised "by the people in the hands of one man, or thirty-three men; the "forty

"tyrants" of Athens were nearly as bad as any of the single tyrants of "Rome, and he would not trust either one or the other any farther than "would be found absolutely necessary."

Here then, continued Mr. F., is the Governor who is to be trusted with passing judgment on the conduct of the highest judges in your courts; and it is at the feet of such a man, that their commissions are to be periodically laid down. When the question of the appointing power was up before the Convention, I advocated the power of the legislature. I believe the legislature to be less liable to corruption; and I believe that, in this instance, they will more effectually represent the people than the Governor will represent them. I believe also that there is in the legislature a more effectual responsibility. A judge, for instance, of the county of Allegheny, comes to Harrisburg, and surrenders his commission. And under what influence does he act upon it? Under some influence operating secretly in the county of Allegheny, unseen and unfelt, by any save the Governor alone. And thus the leading partisans of the day will control the appointment. It will be necessary for party purposes, that this appointment should take place; it will be necessary that a member of the party should have the place. The appointment will take place accordingly, and where shall redress be sought, for any injury which may be inflicted by it? Before whom shall the Governor be brought to an account for his conduct? Before the people of the county of Allegheny? No, sir; but before the people of the county of Dauphin, or the people of the county of Philadelphia, who know nothing at all about the matter. And by what means shall they be informed of it? Through the public press which gives its own partisan views. And how are the people of the county of Philadelphia to judge, or what do they care about it? Are you to bring before a distant people, the case of a judge in the county of Allegheny, or any other county, where people may chance to have been insulted by the action of the Governor, and allow it to be tried by a man who never has seen the county, and who knows nothing about it? By a man who is entirely ignorant of the party concerned, or of the subject itself, except so far as light may be shed upon his mind through the publications and influence of a party press? Sir, this is absurd—it is a farce—a mockery to attempt to search up such doctrine as this to me and to my constituents. I say, there is in fact no redress under a system such as this. It is altogether a party affair—a party business—a party arrangement, and nothing short of it. He may abuse his power, as he now does, and what redress is there for us? Where are we to look for a corrective? We are to submit to the Governor.

And, Mr. Chairman, is every man to be blind as a bat to the pages and to the warnings of history? Are we to shut both our eyes and our ears? Are the lessons of experience to be passed idly by, as though they were nothing worth? What do we find in the history of the state of Pennsylvania? We have a Governor the head of a party. Has it ever been otherwise? To my recollection, it never has been otherwise. How are the appointments made? Are they not uniformly party appointments—appointments given confessedly to those who will carry out the views of the party which may be in power at the time? But this Augean stable, it is said, is to be cleansed. There are to be no more

party appointments—and no more party feeling is to reach the bosom of the executive magistrate of the state. He is to become a saint at once —he is to hold the scale of justice. And we are actually asked to believe that this Eutopian scheme is about to be realized—that the Governor is about to cease to be a party man—that there is to be no party spirit, and no party bias, that there are to be no friends to secure, and no enemies to punish! "*Credat Judæus apella non ego.*" I believe, Mr. Chairman, in the face of all these ideal schemes, that party will still continue to agitate the councils of this Commonwealth, and that man is wilfully blind who cannot see that such must be the course of events. It is a matter which requires no prophetic vision—it is a matter of plain history—it is the effect of our institutions, and is as unavoidable as the rising or the setting of the sun.

But farther, Mr. Chairman. In this argument it is assumed that the most faithful candidates will be selected by the Governor. I am speaking now of reappointments. I assume, on the contrary, that they will be party appointments, and I do not object that they should be so, if there is an equality of pretensions in the member of the party to those which may be brought by a man not a member of the party. The Governor appoints the prothonotaries—judges of courts, &c. And how is it in these appointments? How many exceptions will the history of the Commonwealth of Pennsylvania afford? A few on the bench of the supreme court. Are there any to be found on the inferior benches? If there are any, I know of none—I have never heard of them. They will be party appointments. It is true that we all raise our voices against it, and declare it to be wrong, but still they will be party appointments —just as the prothonotaries, or the associate judges, whose commissions emanate from the Governor. It is in vain to look for any alteration— the thing will go on precisely in the old way. There will be parties— there will be party contentions—partisan editors and partisan prints. Was ever a good prothonotary expelled from office? Why, Mr. Chairman, I never knew the question to be asked, whether he was good or bad. When the appointment to that office was pending, I never heard any question asked save the single one, what party is he of? Why then will you put it to us? Why will you tell us, that the Governor will renew the commission of a man who is of the opposite party to himself? How can you expect that the commission of a judge will be renewed, if he is not a member of the dominant party? It cannot be—and it will not be—unless, indeed, the history of your Commonwealth is nothing more than a fable. I admit that there may be, here and there, a solitary case of a man avoiding contact with all parties, and, consequently, giving offence to none, in which the people may in a body concur in recommending him for reappointment, and where his commission may be renewed. But this would be an exception to a very general rule; such an occurrence is almost hopeless.

What then, Mr. Chairman, is the safest mode of reasoning in this matter? Is it to assume the falsehood of all history, or the truth of all history? Is it to judge of that which is to come, from that which has already been? Is it to be instructed by the lessons of experience, or to close our eyes and our ears against all experience? You prefer to submit your judiciary to the power of your Governor! What is

to be the practical effect of this measure? The judiciary of the country must bow to the Executive. How can they escape? Can the clerks of court escape the vortex of party? or can they stand indifferent between the Governor and the people? Is it reasonable to hope for this? Is it reasonable to expect that any man looking to the Governor for reappointment to office, would meet that Governor and say to him, I have been quite indifferent as to your advancement—I have used no exertions in your behalf—I have done nothing to secure your election—I have expressed my opinion against your measures, because I thought that the public interest required me to do so? What answer, do you think, he would receive from a party Governor—such as we always have had, and always shall have? What chance would such a man have of the renewal of his commission? He would be tampered with for a while, and would then be spurned from the executive door. And the result would be that all men of fortitude and integrity would hold themselves aloof from the executive government of the country. This then is the power for which our confidence is invoked! Here is the tribunal —and here is the man in reference to whom it is considered almost criminal to entertain the slightest degree of distrust.

But, Mr. Chairman, I have another matter to speak of, in relation to this question of confidence. Where was the lesson of confidence learned? It is no virtue of mine, so far as the people are concerned, I have no confidence in power—I am jealous, justly jealous of all power that may crush me down to the earth, or which may interfere with my claims to justice. Sir, I distrust it, and in relation to all such power, it is a just and a sacred maxim that every citizen should be on his guard. The tenure of our liberties is eternal vigilance. Of this serious truth we cannot be reminded too often. Popular power, that is this power, Mr. Chairman? The power of the majority! Who are the people. The gentleman from the county of Fayette, has told us they are the majority. Who are the majority? The strongest party, and who are they? They are a class of men arrayed against the weaker party in eternal hostility. Here then, sir, is the voice of party—the voice of the people, which is said to be the voice of God. Truly, a very comfortable doctrine for those who shelter themselves under the wings of the strongest party. This deity, be it remembered, has many gifts to bestow on his worshippers. And it is the power of the majority—you must have no feeling of distrust to this power, exercising as it does, with such great complacency, its dominion over the right of the minority. One of the greatest men that has been in this age of the world, has given us some valuable instruction in this particular. I allude to the late James Madison. I read from a speech made by him in the proceedings of the Convention of the state of Virginia, at pages 537-538. Let us hear his views of the deity spoken of in the voice of the people. He says:—

"It is sufficiently obvious, that persons and property are the two great subjects on which governments are to act, and that the rights of persons, and the rights of property, are the objects, for the protection of which government was instituted. These rights cannot well be separated. The personal right to acquire property, which is a natural right, gives to property when acquired, a right to protection, as a social right. The essence of government, is power; and power, lodged as it must be, in human

hands, will ever be liable to abuse. In monarchies, the interests and happiness of all, may be sacrificed to the caprice and passions of a despot. In aristocracies, the rights and welfare of the many, may be sacrificed to the pride and cupidity of the few. In republics, the great danger is that the majority may not sufficiently respect the rights of the minority. Some gentlemen, consulting the purity and generosity of their minds, without adverting to the lessons of experience, would find a security against that danger, in our social feelings ; in a respect for character ; in the dictates of the monitor within ; in the interests of individuals ; in the aggregate interests of the community. But man is known to be a selfish, as well as a social being. Respect for character, though often a salutary restraint, is but too often over-ruled by other motives. When numbers of men act in a body, respect for character is often lost, yet in proportion as it is necessary to control what is not right. We all know that conscience is not a sufficient safe-guard ; and besides that, conscience itself may be deluded, may be misled, by an unconscious bias, into acts which an enlightened conscience would forbid. As to the permanent interest of individuals in the aggregate interests of the community, and in the proverbial maxim, that honesty is the best policy, present temptation is too often found to be an over match, for those considerations. These favorable attributes of the human character, are all valuable, as auxiliaries ; but they will not serve as a substitute for the coercive provisions belonging to government and law. They will always, in proportion as they prevail, be favorable to a mild administration of both : but they can never be relied on as a guaranty of the rights of the minority, against a majority disposed to take unjust advantage of its power. The only effectual safe-guard to the rights of the minority, must be laid in such a basis and structure of the government itself, as may afford in a certain degree, directly or indirectly, a defensive authority in behalf of a minority, having right on its side."

So that (continued Mr. F.) according to the language of this distinguished statesman and patriot, the minority may be in the right, and the majority may be in the wrong.

It is seen by his sagacious eye, that the minority can only be secure by laying their security in the very basis and sub-stratum of the government. There must be the safe-guard of a written Constitution putting a fetter on the heel and a bridle in the mouth of the majority, in order that the rights of the minority may not be invaded and trampled under foot. And yet we are told that we must yield to the power of the majority—that we must be blind and deaf—that our tongues must be tied and our judgments paralyzed, in order that they may execute their heavenly dominion and those tender mercies which descend on them, as they say, from the author of all government. I have a book here (the Declaration of Independence,) in which I find the following passage :

"We hold these truths to be self-evident—that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happines ." Sir, do I hold these rights under the pleasure, or the condescension of any majority on the face of the earth ? No—they have a higher genealogy —a far nobler derivation. I hold them not from any majority. They are pledged to keep them inviolate—they are pledged to institute tribunals

which shall protect me from that power—which shall place me on an equal footing with all—where my rights may be defended, and where the laws of the country may be executed in spite of all majorities. Talk to me of a majority. It is the very last doctrine to which I will give my sanction. But there are also other rights which we possess. A man has a right to worship the Creator according to the dictates of his own conscience. Can any man, or any set of men, interfere with that right? They have done so—they have trodden down that right, but they have never blotted it out, they have never anniahilated it. That right still exists in spite of them. I hold it from my Creator, and no majority on earth has any power over it. It may indeed offend them, and they may trample it under foot—but still it is alive—the seed still exists, and it will again sprout out at some future day.

I have also the right to trial by jury. I admit that this right may be taken away. The people may institute another tribunal, but the majority are not inclined to do so. There is yet another right—the right of property. The Constitution of the United States (as see amendment to article five,) says, "nor shall private property be taken for public use, without just compensation." This is the security which is thrown over the right of property.

Again, sir: The Constitution of the United States provides, that the trial of all cases, of individual right, shall be held sacred. It is proposed to take these away. Here are my natural rights—here is the safeguard thrown around them, and upon which I have been accustomed to rely. And what do I hold from a majority? The evil of party spirit is that it sinks man into nonentity—that he becomes a member of a party; that he becomes a make-weight—an integral portion of that physical strength or body, which we call a majority. There he is the head of a party—a champion of a party—there his allegiance is due. He has no right of his own—he has scarcely an existence of his own. And here has the effect of the rights of a majority—in the tendency which it has to merge individual rights—to sink the man—and to build up a power, which, since the days of Adam, has been always in the hands of one, or two, or three individuals who govern us. Who gives laws to the lawless? Who curbs omnipotence itself? Is it not true, practically true—do we not all assent to it—does not our history show, that it is a popular man. His voice, it is that is the voice of God! His name is at the altar! To him it is that men bow down their supple knees to the earth and become nothing for his sake! That they count themselves as nothing, save as the sunshine of his brow is reflected upon them. Look at our history! How often has the simple beck of a leader over-ruled the majority! How often has the leader of a party, governed, controled, and turned at his pleasure, the will of nine-tenths of that party! Sir, has such a case never occurred here? Is it not known what was the triumphant voice of the people of the state of Pennsylvania a few years ago—only some seven years ago—on one or two subjects? Mr. Chairman, I am no party man in motive. But how, let me ask, did it happen, that, all of a sudden, a new spirit rose up among them, and that they heard with new ears? that they saw with new eyes? that they got new understandings? and that objects dear to them but a few short months before, became distasteful and loathsome? Here is a matter of fact which is known to all. And this is party! And we are called on to bow down to this party!

Sir, if it be true that confidence is the highest virture, I never heard it before. If it be true that the voice of the majority is always right, in regard to the exercise of power by the people themselves; if it be true that the voice of the people is the voice of the Deity, why how does it happen that we have a written Constitution? Why is it that we do not commit ourselves to the mercy of the majority? Why is it that the various departments of the government are kept separate and distinct, and the boundaries of each defined? Why is it that the Constitution sets forth that we have certain natural and inalienable rights? And why, too, do we declare so often that this is a government of laws, if we are to be committed to the judgment of a dominant majority—a merciless majority—a tyrannical majority—a selfish majority? Why is it? We are, then, it seems, brought to this point, that there are persons among us who discountenance a government of law—who think it the greatest evil in the world, who are afraid of our government. So far as my own rights are concerned, I care not what gentlemen may think on the subject. The present Constitution cannot be suppressed by the power of a majority. I came here, then, claiming the right, and feeling it to be a duty to distrust that power. Sir, I will not blind my eyes, nor darken my vision in any respect whatever. The whole executive history of the Commonwealth has shown that the Governor is a party man—that he has his connexions and alliances of partisans in every county, who control the appointments, to a great extent. Who has governed the counties of Westmoreland and Allegheny, more than any other county in the state? Who are his organs? He has only to learn from his organs what are the views entertained in his neighborhood, to enable him to act accordingly. Who informs the executive of what is going on? Why, there is a few organs in every county—a few papers, or a few individuals who slily, covertly through the post office, give him information. Or, else it is done by an agent dispatched at midnight from the midnight politicians, station, as a sort of Jannissary guard over the people. And, to what tribunal is it that the Governor is obliged to bow down? It is to a herd of midnight politicians, who love darkness rather than light. Sir, it is these men who have the control of the appointments. It is the voice of history that these men control the appointments. And, sir, to whom is a judge amenable, in practice? Why, these very men—men who may have been parties in his court—men against whom he has been obliged to pronounce, in the performance of his duty, the judgment of the law.

Now, is it not perfectly clear that the judiciary, under those circumstances, must degrade itself to the level of a party? that your judges will be found sooner or later, bound hand and foot in the trammels of party. I know it, and every man knows it. And, what is the party? and what does it want? What is the majority craving for? What is the ambition of the day? In every republic, ancient and modern, the desire has been —more power—to heap Pelion on Ossa. That is what is now wanted. Ambition monopolizes every thing. Those who have read the history of Athens know well what was the character of the majority there. It was headed by demagogues who appeared frequently in the forum and addressed the people about their liberty and rights, at the same time that they were plotting against both, and at length they disgraced and ruined their country. So it was in Rome, where the majority of the whole people wanted Cæsar, and they got him, and he made slaves of them.

Whose work was it? The work of a majority—through their organs, a small knot of men who were the orators and leaders of the people. At length, however, their power overleaped all bounds, and the country was crushed down by the iron hand of tyranny. Who ruined Rome but her pretended patriots, who were perpetually admonishing the majority against the minority? Look at Paris—there is a majority there: but it is never satisfied; it never cries "enough." It matters not what; but any thing in the way of a triumphant majority that can be seized and held, it never will refrain from taking, from using, and from abusing. Sir, our own written Constitution, and all the invaluable state papers which have emanated from some of our greatest and best of men, contain warnings to us against yielding all power to a majority. There, power has gone down; there, liberty is inactive; there, the edifice is all broken to atoms. There, was a republic once, and there was an imperial tyrant holding his sceptre at the will of the majority. Well, sir, I know, and every man who hears me knows, that this Constitution is designed to secure private rights. The whole genius of the government is, that individual rights shall be kept sacred and inviolable. The majority can take care of itself; but, it is you and me who are to be protected. There are safeguards in the Constitution thrown around the minority, and checks imposed by it upon a triumphant majority. It says, in so many words, "so far shalt thou go, and no farther." Here are secured to the minority privileges which the majority never gave, and with the help of God, they shall never take from them. When these privileges are invaded—when the majority loses respect for laws—when it puts might in the place of right, and when it tramples down inviolable rights, it cuts loose from the Constitution, and totally violates its provisions. If they break the Constitution, then I am bound by it no longer. An unprincipled majority may be met with the sword or with any thing else. A triumphant majority have no rights which were not acquired by the social compact, and that compact is designed for the security of individuals. Who may have it? Why, all; the aged, and the young, and the infant in the nurse's arms—all ages and conditions, and no earthly power can take it away from them.

Sir, what are you to do in behalf of individuals whose individuality is not merged in this corporate majority? Why, you must have courts to protect them, and see that the fundamental laws are not violated. He had been alarmed to see the propensity of men to magnify the rights of the majority, knowing that its must end in their own destruction. It is now the rage to distrust the power of the supreme court, and to entertain doubts in regard to its having the power to declare an act of the legislature unconstitutional. Every man feels that he should be protected in his rights. And, the supreme court, when a majority of the state is unjustly arrayed against individuals to crush them, can interpose and protect him. In all conflicts in which the power of the state government has been brought in question, you find it has been owing to the tyranny of the majority seeking to crush one or more individuals. It is individual rights against lawless power. It a is citizen claiming his natural rights, perhaps, against the usurpation of an unlawful majority. I say, then, that the supreme court has the power conferred on it of annulling any act of the legislature taking away, or impairing the rights of individuals guarantied to them by the Constitution. In the state of New Hampshire

a church had been bequeathed to an individual, and under which education was to be maintained; but those who ordained these were unpopular, and did not belong to the popular party, and the legislature undertook to break down their rights and privileges. And, they put in men who had contributed nothing—who were not wanted, and who were intruders, to the ruin of their private rights. It became a question whether those who had rights should be protected or not. So, in New York, in reference to the celebrated steamboat case. The legislature had granted to an individual a monopoly of the harbors and rivers of the state, in violation of the Constitution of the United States. He was arrested in New York, and the act of assembly was declared to be null and void. Here was an instance of the exercise of the power of a majority, against the rights of individuals. Here was a legislature throwing their ægis over an individual, and protecting him in an exclusive privilege. Now, this was decidedly wrong.

Sir, is it no privilege to meet a throned monarch in court, on an equal footing, as well as the greatest states of the union? Or, that the most helpless, most friendless, most forlorn individual may meet you in the courts of justice upon a footing of perfect equality? There, titles and sceptres and military glory and wealth are nothing. No claim, but that which is founded in right and justice can be heard in a court of justice. Is not this, then, a sacred and priceless privilege to contend for, and one which ought never to be surrendered. Tell me not about having no confidence in power.

I have a few more words to say on this point: I say it is the covenanted right of every individual to go into an impartial court. I contend, that the Commonwealth is sacredly pledged to provide every man an impartial tribunal, where the weak can meet an confront the strong; where poverty can meet wealth in the face; where the helpless can find security, if the law be in their favor. Do you propose to give it? Look at the tenure which gentlemen want. Suppose a man to be obnoxious to your county lawyers, to go into court and be indicted for a libel; or that he himself should bring an action against an individual who may have defamed him—held him up to ridicule and scorn, and it should be made a party question of—having grown out of party effervescence and political discussion, and it should happen, that the judge's commission is just expiring from his grasp; he knows, as well as that he is in existence, that if he dare to do justice, he will be immediately superseded by some other judge. Now, sir, I say that is not the judge for me; that is not the justice to which I am entitled. I contend, that there is not the impartiality and independence, which is guarantied to every man; that he shall have his rights secured and his wrongs redressed. Justice will be secured by having on the bench an honest, upright, and independent judge. Sir, if you have an able, upright, and honest man in the judgment seat, no matter what power may threaten, what flattery may be used, or promises made, or fears or hopes inspired, he will do his duty without bias. But, sir, will *all* men do it? How is it with the higher officers of the Commonwealth? How is it with the men that gentlemen have spoken of so freely and plainly? How is it with the Governor, the highest officer known to our laws? Has he any bias? Does any one doubt it? He is the slave of bias. Yet, a judge must not feel it! You allow a Governor

to use all the means and appliances of his office—it is natural—it is human—it is honorable—it is quite upright. And, if it be so, how can you deny the same privilege to a judge? I know that he may frown down power, and that he may be honest under the grinding machinery that is to put him out of office. What, sir, is the argument? Why, that it is better, politic, and right, that our judges should be placed in a condition, where they can administer justice at the peril of their private interests. Are you safe under an administration of justice on that mode? Are there no men obnoxious to the government; no men whom it would be desirable for the party to subdue and crush? Are there no institutions in the Commonwealth, which stand in the way of the triumphant majority—that can meet it in a court of justice? Are there no insitutions that are looked upon by the majority, with great bias—with deadly hatred, and that have no protection—no shield, except that which is found in your courts of justice? There, sir, is your legislature, legislating in regard to men—calling in question their proceedings, seeking to crush, to put them down. In fact, the whole power of the Commonwealth of Pennsylvania, is brought against them. They are looked on with a jaundiced eye. The direst denunciations are poured out against them, and continual threats are made to repeal or abolish their charters. It is in vain for gentlemen to tell me that a judiciary, such as is proposed to take the place of the existing one, is an *independent* judiciary. It is a mockery of language to say so. Sir, I have a great deal to say—much more than I could wish to trouble you with, for I am weary, and I dare say that you are. What I desire, sir, is an independent judiciary. It is not enough for me to behold, that a judge must stand and breast the storm. Let him breast the storm, or yield to it. I would oppose—I would prevent the injury that might be done from the tide that is rising. You tell him to breast the storm—to stand firm—that he may wear a crown of martyrdom. Sir, what is the argument put forth in itself? It is this: that you can never stay, or keep still the hand of persecution. Let the virtue of men be tested; and if they should be found infirm, let them go. If men are firm in their faith, they will die in it; but if not, they will let it go. Let persecution have full scope, and let those who will, yield to it. Do you not know, that although you let loose the spirit of persecution, you do not, at the same time, shield a man against it? Do you not know that the public is to suffer by it? What is to be the effect of it in practice? Why, the man who yields will be continued in office. Like the bending rush, that yields to the gale, he yields to his party, and is consequently retained. But, the man of stubborn virtue, will be trodden down; he must be made a martyr of, because you will not stay the hand of the persecutor. It is palpable, that if you renew the commissions of the judges, you suffer a man—a partisan—a man that knows his cue, who is willing to do anything, no matter what, to retain his office. Yes, the low minded, the ignoble, sordid hearted judge will succeed in getting his commission renewed, because he has done "the party" a service; because he has done their high behest; while the worthy man, who confronts power, loses his office. Sir, what will be the condition to which your judges will be reduced under this new regulation? They will be the slaves of the executive; they will never distrust the power of the majority; they will bow themselves in the dust. You will then have a judiciary—more glaringly political in character, and much more debased,

than any before known in this Commonwealth. We shall have party judges all over the land. Let the gentleman, (Mr. Woodward) tell me not that there is management behind the scenes; that it will not be necessary for the judges to bend to party; that no man has anything to fear from power who stands firm against it. Let the gentleman, I say, shew me this, and I will give my vote for his proposition.

Sir, let us approach the subject of the proposed tenure again. You will have remarked, the advocates of it contend, that it will secure that responsibility, which is wanting under the present constitutional provision. Sir, I deny it. A judge during his commission is perfectly independent. For instance, a judge is commissioned for seven years. He is irresponsible during that period. This is the argument of gentlemen; and they have given us a solace—a consolation, by telling us that the people can bear a seven years' bad judge; the same number of years that Jacob was pursuing his wife. Here, then, is a man without responsibility. The gentlemen, sir, offer you no security whatever; but, they tell you a judge is to be commissioned for seven years, during which time he will be wholly irresponsible, and then it is to be ascertained whether his commission shall be renewed. This, sir, is not my theory. I require that a man shall be approached, and displaced at once. Why should we be kept waiting for seven years before we can obtain redress; before an opportunity shall be presented to us of getting rid of a corrupt and unjust judge? Give us the ordinary length of human life, and yet one-third of it is to pass away before we can remove a judge. It is too long a time for me to wait. I cannot evince so much patience. I am in favor of a plan by which an offending judge may be promptly brought to justice. What consequence is it to me that a man who has trampled on my rights, shall be brought to an account, and I in my grave? What signifies that a man, who has been unjustly dealt by in a court of justice, shall go to the governor, and remonstrate against the judge? Or, if he should die, and bequeath his claim for justice to his children, they may, perhaps, succeed at the end of seven years, in obtaining what their father sought. And, sir, if either he or they should get their rights—what then? Why, it is a mockery! at the expiration of seven years they are to obtain justice! They may wait on the governor, and be ushered into his dark back parlor. If he chooses to listen to their story, asking satisfaction from a man who had robbed them six or seven years before, it is all very well. But, he can render them no service. And, perhaps, the next judge he puts in, may be no better than the one that went out; so that there is no security. Gentlemen say that the frequency of appointments is calculated to assuage the bitterness of party spirit, and to soothe the angry passions. I cannot concur in this opinion. On the contrary, I think that the appointment of a judge during good behaviour, has a tendency to allay political and party excitement. The disappointed man never sleeps on the acts of his political antagonists. The fire of disappointment almost consumes him, and its embers will never cease to burn. You have a renewal of appointments in the hands of a party, and so you go on from term to term with an irresponsible judge. Sir, what is the difference between a man holding his commission for seven years, and another during good behaviour. Do you want this slow process of obtaining redress, of waiting seven years for it? Why should you wait so long? Is it not due to the public, that they should get it earlier? Is a man to go on for

seven years with impunity, and not be impeachable?—and, at the end of his term stand acquitted with honor before his country? Now, sir, that is not the sort of redress which honest men have a right to claim; nor is it the redress which the majority here are bound to accord. They have a right to give the most ample redress, and that immediately. If a judge has done wrong, he must be disgraced. And, sir, I trust that the amendment I have proposed, will go to secure this right to every freeman of the state.

Sir, the gentleman from Luzerne, (Mr. Woodward) has argued that there is no danger of an abuse of power. Then why not grant redress immediately? Why postpone it for seven years, and keep me all that time smarting under the evil? If you give the governor the power to appoint to office, why not remove? Can any one answer? Because those who propose this reform, have no confidence in it. They know that the governor is not to be relied on. They know, too, that the judiciary would be at the feet of the executive. It is said that no injustice will be done to the judges; that a man of talents and virtue will prevail over a man, not possessing these qualifications, but whose politics are more congenial to the ruling party. Now, I put it to gentlemen to say why I should be compelled to endure a wrong for seven years, if the executive be competent to decide. I do not see that any satisfactory answer can be given to this question. I contend, that if the governor is competent to appoint, he is equally competent to remove. The legislature can hear the complaint—bring the judge before them—try him, and eject him from office, if guilty of the charge or charges preferred against him. There is redress. Why is it not sought after? Why is it decried in this body by those very men who tell us of their confidence in the people, and of their desire to relieve them from oppression? All the evils that were ever let out of Pandoras box, have been charged to the judiciary. Does any man expect? did any man ever foretell, that an independent judiciary would be necessarily infallible?—that no man was to appear on the bench, but what was as wise as Soloman? That none but those who were as juridical as any in the country, would find their way to the judgment seat? No man expected it; I certainly did not. I concur with gentlemen, that there may be some good men expelled from the bench. Thomas Cooper, (whose name was brought into the debate, I know not for what purpose,) was sitting in judgment on a boy for horse stealing; and for which offence he might have been sentenced to be imprisoned for ten years, and in consideration of his youth, he reduced the punishment to one year's imprisonment. The associate judges, however, ascertained by the following morning, that he was an old offender, and that the lenity of the court was misplaced. They thought to have him brought up again, and they passed a heavier sentence on him. This, they had a right to do, for they had power over the record as long as the court remained in session. There was no injustice in doing as they did. This was done, let it be remembered, at the instance of the associate judges, and not of the president. He merely exercised his power. The boy was accordingly sentenced to three years imprisonment, for nothing but the trifling little offence of stealing a horse. I see nothing to implicate the conduct of Judge Cooper. And, if any complaint was made against him out of the legislature, his concsience acquitted him. If any blame rested anywhere, it was with the associate judges. It is said that he imprisoned a man for

refusing to pull off his hat in court. Suppose he did. Well, he is brought before the legislature, tried, found guilty, and expelled from office. Now, sir, does this not shew that the legislature will act impartially? Does it not shew also that the injured party does not apply for redress and justice in vain? Does not the example of Thomas Cooper prove that redress may be had for the wrongs practised by an unjust judge?

There was another case—that of a judge becoming a drunkard. It was said, that if the official tenure was limited, a judge would not drink to excess; but that, when the tenure is good behaviour, the judges have been often intoxicated with the flowing bowl. Men, it was said, might fall into this habit of intemperance, and become unfit for the discharge of their duties. When judges were brought before the legislature for vice, immorality, gaming, they shrunk from an investigation, and were, if guilty, very glad to compromise, by resigning their offices. The legislature was empowered to remove the judges in this case. Why should we step in, and say to them, you did not carry your power far enough in the punishment of these judges? Why should we arraign the judges because the legislature had not been sufficiently strict with them? There was no provision in the Constitution of the United States to retain idle or drunken judges, and the hostility to the system, deduced from that argument, was without any foundation.

Another cause assigned for shortening the term, was error of judgment to which all judges are liable. But was it ever expected that a man must be infallible, because he is a judge? Was it ever supposed that our judiciary was to be invested with that infallibility of wisdom which is the exclusive attribute of the Deity? Do we expect that they will never be betrayed into error, in the dark, perplexed, and arduous course which they pursue? Would any tenure render the nature of man more akin to that of the Deity? Could we obtain more learning, more wisdom, more experience, or more infallibility of judgment, by bringing in new men, and working frequent changes? No. This system of changing would serve no purpose but to bring into office, for a short time, some hungry and needy expectants. The judges are among the learned and honorable in the land. Slander may assail them, but still they are among the best and wisest in the country.

The judiciary of Pennsylvania, he admitted, had sometimes been unpopular. But the reason of its unpopularity was, that it stood in the way of the dominant party in the Commonwealth. The party could not, when they would, break it down, and appropriate its influence and emoluments to themselves. Judges were always unpopular with parties; for, if the politics of the judges are looked at, they must find an enemy in every individual of different political sentiments with themselves. Judges, whose political opinions do not accord with those of dominant parties, are maligned out of doors, in the hearing of the public; they are assailed by the party newspapers, and every effort is made to render them odious to the people. Must the judges yield to this clamor, and shape their doctrines and deeds accordingly, or be hurled, by popular will, from their offices, making room for mere party favorites?—for mere demagogues, perhaps, who were the means of raising an excitement against them, and expelling them from office. No judge could administer justice without offending powerful men, and, perhaps, whole com-

munities. They may, in some cases, presume even to offend the legislature,—the power which holds even the rod of expulsion and disgrace.

But for whom do they make these sacrifices? For themselves?—for their own advantage? No. They thus brave the storm of popular and official excitement, for your sake, and that of your children. They do it for all those who are oppressed, and who come to them for justice against their powerful and popular oppressors. To act thus independently is the glory of the judge, so long as he can be protected in the discharge of his duty; but, unless he be guarded by this tenure, he must go out of office, for the exercise of his judgment against the will of majorities. If the judges be deprived of their independence, then you and I cease to be safe. It is for the weak and helpless that this tenure is provided. It is not the judge who is himself the object of the tenure, but it is the person who comes to the judge for justice. It is to assure all suiters that the judge will dare to do his duty. It is not for the judges that this tenure is secure, but for the suiter. It is a pledge to all, who ask for justice, that their rights shall be held inviolable. A war is waged against judges, because they hold commissions. He confessed that he was grieved and astonished at the arguments and views which had been adduced here on this subject. He wondered that gentleman who declaimed against the judges, did not look beyond the commission and its tenure, to the helpless men, to the widows and the orphans—to the oppressed and the weak, who come as suiters for justice; and there is the reason that security is given to the judge against the attacks of party clamor, and popular caprice.

It had been admitted here, in a word, by one gentleman, (Mr. Woodward) and the gentleman from Philadelphia, (Mr. Ingersoll) that the tendency and objects of their propositions, was to render the judges responsible to the people. This was a strange doctrine, for it took from the judiciary the whole of its peculiar character. What would be the result of putting the judges on a tenure of popularity? Would the legislature, or the Governor, remove popular judges by address? No. Within the circle of their popularity, they may play the tyrant as much as they please, acting according to their own arbitrary discretion;—not administering the law, and expounding the statutes, but taking our money and courting popularity. But, in fact, all that we want a judge to do, is prescribed within written laws; and we do not wish him to turn to his right hand, or to his left, to please the power from which he derives his official existence. He is entrusted with no discretion. He has no power to do harm; but it is his only office to do good. He could do nothing, but administer the justice of the country according to law. For what purpose was he placed in the judgment seat? To protect the helpless individual. Because the legislative and executive officers were responsible to the people, it was no reason that the judicial officers should be. There was no analogy between the two cases. Their duties, and the purposes of their creation, were wholly different. What object would there be, in arraigning a judge before the people? For what purpose should he be brought to this accountability? What has he done? He has administered the law, and his decision has been appealed from to the people. The case is discussed before the people, and, according to their judgment of the merits of the judge, they are to decide whether he shall

be re-elected. Are not the laws of the country my property? Can the people over-rule the decision of the court? No. I hold my right to that decision under the constitution and the laws, and neither the whole people, nor a portion of them, can deprive me of it. The people can say to me, we will make a new law for you; because I have my rights as one of the people, against all the rest of the people.

Sir, I have kept in view, in my amendment, the great object of preserving the independence of the judiciary. To separate the judiciary from the influence of party, I believe it would be effectual. It would prevent the judges from depending upon, and watching the elections. It would secure the administration of justice to the people without delay, denial, or sale.

Mr. ROGERS, of Allegheny, said,

Mr. Chairman:—In the progress of our discussions we have arrived at a subject full of interest. Far above all the other departments of government, in importance and responsibility, is the judiciary; high, sacred, and even holy, are the duties of those who perform its functions. Their object is the administration of justice between man and man. Sir, I speak in no spirit of exaggeration. I indulge in no extravagance of sentiment, when I say, that it is for this, that government is mainly instituted. It is for this, we surrender a portion of our natural rights, when we enter into the social compact. All that we see around us, in the vast and complex machinery of government—in the operations of the executive and the legislative—all, have for their great end, the pure and perfect administration of justice.

The subject is a grave one. Whatever relates to it, comes home to the interests, the hopes and the happiness of every individual in the community. The life, the liberty, the reputation and prosperity of the humble and the proud—of the poor and the rich, are all to be guarded and protected by an efficient and well organized judiciary.

The structure, however, of this department of government, has always been a subject of great difficulty. While the republics of antiquity contemplated the legislative and the executive, and described minutely, their relative sphere of operations, yet very few of them paid any attention to the judiciary. In most of them, the judiciary was merged in the legislative and executive.

I am not astonished at the zeal and enthusiasm displayed by the aged members of the profession of the law, in defence of the judicial tenure for life, as contained in the existing constitution. Some of them have spoken in support of that provision, in a strain of true eloquence. I can respect the feeling which induces them to clothe with such reverence, the constitution, although I do not participate in it. That constitution has been for years associated with their hopes, their sympathies and their ambition. It has, in their eyes, an imposing aspect. It comes down to them like an estate of inheritance, through a long line of ancestors. It is familiar and dear to them, as the patrimonial trees under which they sported in youth, and under whose shade they desire to repose in death.

The aged too, always cling with tenacity, to old forms. What is covered with the dust and cobwebs of antiquity, is, in their eyes, sacred. It was the old lawyers of England who resisted for a great length of time, all amendments in the customs and antiquated forms of English plead-

ings. Sir Matthew Hale, in his treatise upon the law, thus describes the feeling:

"By long use and custom, men, especially, that are aged, and have been long educated to the profession and practice of the law, contract a kind of superstitious veneration of it beyond what is just and reasonable. They tenaciously and rigorously maintain those very forms, and proceedings and practices, which though possibly at first they were reasonable and useful, yet by the very changes of matters, they become, not only useless and impertinent, but burdensome and inconvenient, and prejudicial to the common justice and common good of mankind."

But the question has been repeatedly asked, is a change of the judicial tenure desired by the people? I am not able, sir, to speak the sentiments of any portion of the state, except my own immediate district. The friends of a reform of the constitution, have always rallied there under a banner upon which was inscribed, the abolition of life offices. A portion of my constituents addressed me upon the subject before my election. In my letter to them, I expressed myself in favor of a limitation of the judicial tenure, to a term of years. I shall endeavor in my action, in this Convention, to carry out the principles I advocated, in the same honesty of purpose that I was then governed by.

Can any one say, that the situation of a judge, under the existing constitution, is not an office for life. The people have ever regarded it as such, although it is not the language of the constitution. Yet the removal and impeachment of a judge, are obtained with such difficulty, that, to all practical intents and purposes, it amounts to one.

A life office! how inconsistent with republican institutions and that equality, the proud boast of a free government!

Sir, the present constitution of Pennsylvania, in the structure of its judicial department, and in many other respects, is as far behind the spirit of the age and the progress of mind, as, fifty years ago, science was, in its application to mechanics.

I can compare it to nothing but one of the old feudal castles of the thirteenth century. Massive and strong, with battlemented towers and frowning walls of stone—it towers aloft in the sullen grandeur, and gigantic proportions of the architecture of the times. How poorly does it compare with the light, simple and graceful building of modern times.

We should endeavor to make our constitutional amendments correspond to the impress of the times. Laws and institutions should be moulded to the workings of the progressive spirit of ever-thinking man.

What new discoveries in science and in the whole field of mechanics, have been made within the last two centuries? How has public opinion been enlightened? How many new truths disclosed? Shall we not model our institutions of government according to the opinions of the age? Is it not the part of true wisdom to do so?

The defenders of the life tenure, rely upon the antiquity of their principle. They have discovered its existence more than two centuries ago, even before the reign of William III.

Is that any argument in its favor?

Are we asked, now in the middle of the nineteenth century, to roll back our institutions and to make them correspond to those of the sixteenth century. Would it not present a singular spectacle? The people

are often in advance of their government. The restless spirit of inquiry is ever seeking to enlarge the foundations of liberty. They press against these ancient institutions, and burst from the trammels they have imposed upon them.

The history of the judicial tenure in this country is peculiar and interesting. The constitutions first framed by the people of the states, with but two exceptions, contain provisions, clothing their judges with a life-estate in their offices. Pennsylvania was the first to forsake the English model. In the original convention of 1776, her sages, Benjamin Franklin, David Rittenhouse, and their associates, established the following as the fundamental law:

"The judges of the supreme court of judicature, shall have fixed salaries—be commissioned for seven years only, though capable of re-appointment at the end of that term, but removable for misbehaviour at any time by the general assembly; they shall not be allowed to sit as members in the continental congress, executive council, or general assembly, nor to hold any other office, civil or military, nor take or receive fees or perquisites of any kind."

Most of the othes states, who have formed o- amended their constitutions, after a more full and free discussion of the principles of republican government, have either made the judicial office expire at the age of sixty or seventy, or limited the tenure to a short term of years. New Hampshire, Connecticut and New York, who have amended their original constitutions, have declared that no judge shall hold his office after he has arrived at the age of sixty or seventy. Ohio, Indiana and Mississippi, have limited the judicial office to a short term of years. Within the last few years, public sentiment has increased in strength. It is curious to note, how the little rivulets of thought, flowing in from different parts of the Union, have at last formed an overwhelming wave of popular opinion upon the subject. In the convention of North Carolina, which met in 1835, the principle of a limitatiou of the judicial tenure, to short terms of years, was ably contended for by that distinguished statesman and then president of the convention, Nathaniel Macon. He was not successful in procuring its adoption. The words of truth, and that maxim of judicial responsibility to the people, then so eloquently announced and advocated, found an echo in the heart of every genuine republican in the Union. The recent amendatory convention of Tennessee, limited the term of the judges of the supreme court to twelve years, and that of the inferior judges to eight years. In running my eye over the records of that convention, I find among its delegates, many eminent citizens of that state. Men who have been distinguished, not only in the legislative hall and judicial forum, but in the battle fields of their country.

The states of Arkansas and Michigan, just admitted into the Union, have adopted the same principle. Even in our own state, at the present time—in the district courts—a creation of the legislature, an example can be found of the limitation of the tenure. Is it possible that justice could be administered in any courts, with greater fidelity, impartiality and independence! Yet the judges of these courts hold their offices for a term of seven years.

With these examples before us, who can say that we are contending for any wild and visionary project, or seeking to establish any new and

untried system? Who can say that we are not rather endeavoring to lay broader and deeper, the foundations of liberty, by bringing every public functionary into more strict and frequent responsibility to the people?

The limitation of the judicial tenure in the amended constitutions of New York, New Hampshire and Connecticut—where at the age of sixty and seventy, the judge must abandon his office, I regard as a bad example of a good principle. What is it but a virtual personal disqualification from office—arbitrary and tyrannical, and sustained by no sound reasons of policy or expediency? What is it but to deprive the people oftentimes of the exercise of talents of the highest order—improved by study and patient application? The most uncertain of all things, is vigor of mind at an advanced age. In some instances, as the body decays, the mind seems to increase in strength and brilliancy, and even from the borders of the grave, to flash forth an unnatural fire. The constitutional limitation of New York drove into retirement at the age of sixty, Chancellor Kent, with a mind as fresh and vigorous as in early manhood, and loaded with the accumulated treasures of learning. Lord Mansfield, the presiding genius of English law, resigned his situation of a judge, at eighty three years. Yet, who does not know that his latest decisions were often the most luminous, and exhibit most plainly the distinguishing marks of a vast and comprehensive mind?

How different is the operation of that judicial limitation where every ten or twelve years the chief executive of the state—the representative of the people, will decide upon the character of a judge. Then a regard for his own reputation will induce him to nominate for judicial stations those alone eminent for their legal abilities and private virtues.

Then, when occasionally some Mansfield or some Kent might arise—not more honored upon the bench than endeared to the people—it will be the proud duty of an executive—anxious to protect the interests and elevate the character of his state, to re-appoint and continue them in office.

A people ever generous to public servants, would not allow him to cut off eminent judicial officers in the vigor of their days. Much less would they tolerate an executive that would turn them out in the winter of their days, with all their faculties bright and unimpaired, to the cold, mocking inhumanity of the world. If they did, they would deserve the bitter censure contained in the lines addressed by a modern poet, to the last days of Sheridan.

> "In the woods of the north there are insects that prey,
> On the brain of the stag, till his very last sigh;
> But genius thy vot'ries, more cruel than they,
> First *feed* on thy brain, *then leave thee to die.*"

One of the principal advantages to be derived from a judicial tenure of short terms, will be, that it will stimulate the judge to study, and to the cultivation of amenity of manners. Men, in the discharge of laborious duties, are apt to become slothful and negligent, unless aroused to action by some quickening impulse and incentive. The sloth of judges has been so much a matter of complaint, that in England it has been gravely proposed to pay them in fees, in addition to their salaries. Think you, however, that a judge who was sensible that, in a few years, he would have to pass in review, before the appointing power of the state, would

be remiss in the discharge of his duties? Would he attempt to play the petty tyrant— to wound the feelings, or destroy the reputation of members of the profession of the law? Would not the keen, sleepless eye of the people and the watchful vigilance of the executive, constantly appeal to his selfishness and interest, to endeavor to fill his situation with diligence, integrity and propriety?

Gentlemen, who have so extravagantly eulogized the provision of the existing constitution, have pointed with an air of triumph to England, for a perfect model of a judicial system, and as a glorious example in favor of the life tenure. I am not one of those who bow down with an implicit reverence to the institutions of a monarchical government. In my mind, the ruder institutions of the elder governments of Greece and Rome, of the cantons of Switzerland, or even of the newest republic in our western wilds, would be entitled to more respect. What is there in England, with her hereditary nobility intrenched in feudal castles and baronial splendor—with her judiciary vainly struggling to rival in grandeur, strength and permanency, its kindred institutions—for us to copy and to imitate? But, singular as it may appear, not even England, has a judiciary clothed with such irresponsible power as Pennsylvania. In England, a majority of the representative branch can, by address, remove a judge. In Pennsylvania, two-thirds of the legislature is required. In England, when a judge becomes superannuated, and incapable of discharging the duties of his office, he is placed upon the pension list. Where, in this country, is that bounty which, never dried and never exhausted, is to be constantly dispensed to the inefficient judges of the land? We seek for it in vain. Such a thing as a pension list, is incompatible with the nature of our institutions, and obnoxious to every republican sentiment.

How vain is the effort too, in this country, to attempt to impeach a judge even for criminal enormity, at whose very recital, the mind shrinks back with horror? False sympathy, lofty station, powerful friends, and the difficulties of a connexion, all conspire to screen the guilty and even to continue him in office.

Do you believe that even the great English lawyers, would sustain a principle, to the extent that it is carried in the constitution? Do you believe they would countenance such entire irresponsibility, with no pension list to dispose of imbecile judges—with the perfect absurdity of an impeachment, and the requisition of two-thirds for a removal? Even in England, many of the judges hold their situations for short terms of years. The lord chancellor and the judges of the courts of admiralty, are appointed at the pleasure of the crown. Can any judiciary embrace so vast and so varied an interest, as that of the chancery of Great Britain? Can any station be conceived, requiring greater independence and more eminent abilities than that of lord chancellor? In addition to this, a great amount of the legal business of that country, is performed by *pro hac vice* judges. Jndges deputed with a short and temporary tenure, to execute some specified business in different parts of the kingdom.

The gentleman from Northampton, (Mr. Porter) says that if you limit the judicial tenure, none but partizans will be appointed to office. Is it not so now? Will it increase the evil? Has it not been the uniform practice of the executives of Pennsylvania? Who have been the chief

justices of the supreme court of the United States, but men distinguished at the time of their appointment, as prominent members of one of the great political parties of the country ?

Is it different in England ? If any one doubts it, let me refer him to a speech delivered by Henry Brougham, at one time lord chancellor, in the house of commons, February 7, 1828.

Alluding to the practice of the Ministers in the selection of judges, he says :

"Is all the field really open ? Are there no portions of the domain excluded from the selectors authority ? True, no law presents such a search for capacity and worth ? True, the doors of Westminster Hall stand open to the Minister ! He may enter those gates and choose the ablest and the best man there. Be his talent what it may, be his party what it may, no man to whom the offer is made, will refuse to be a judge. But there is a custom above the law, a custom in my mind, "more honored in the breach than the observance," that party, as well as merit, must be studied in these appointments. One half of the bar is thus excluded from the competition ; for no man can be a judge who is not of a particular party. Unless he be the known adherent of a certain system of government—unless he profess himself devoted to one scheme of policy —unless his party happen to be the party connected with the crown or allied with the ministry of the day, there is no chance for him : that man is surely excluded. Men must be on one side of the great political questions to become judges, and no one may hope to fill that dignified office, unless he belongs to the side on which courtly favor shines. His seat on the bench must depend, generally speaking, on his supporting the leading principles of the existing administration.

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"Does not this arrangement instil into the minds both of expectant judges and of men already on the bench, a feeling of party, fatal to strict justice in political questions ? I speak impartially, but unhesitatingly on this point, for it is perfectly notorious, that now-a-days, whenever a question comes before the bench, whether it be upon a prosecution for libel or upon any other matter connected with politics, the counsel at their meeting, take for granted, that they can tell pretty accurately, the leaning of the court, and predict exactly enough which way the consultation of the judges will terminate."

What a picture of English justice from the pen of an English advocate ! What a practical illustration of that judicial system—to portray whose beauties no praise has been thought too extravagant—no eulogy too high-wrought, and to which we have been constantly referred as an example. A system, under whose operation the power of the crown is exerted to crush the liberty of the citizen, and to announce in mockery, the judgment, before even the forms of justice have been administered.

It has been said by gentlemen in this debate, that the life tenure has been engrafted upon the federal constitution and has worked well. Probably the propriety of no provision in that sacred instrument has been more often doubted than that which relates to the judiciary. Thomas Jefferson " in numerous essays and letters, which have been published, has declared it to be " anti-republican because for life."

Could a brighter name in the list of American statesmen be brought to influence our decisions? Jefferson, whose patriotism was of the revolution, and whose character has shed lustre upon the annals of his country. Philosophy has enrolled him in her glorious constellation, and history has embalmed his name in lines of endearing remembrance and grateful eulogy. I am aware that party malignity has attempted to impugn the motives that dictated the opinion of Jefferson. The same spirit would tear every laurel from his brow. It would violate even the sanctity of the grave—and erase, if possible, the monumental inscription over the honored dead. Vain and futile effort! His name is a rich legacy of glory to his countrymen, and his recorded opinions will ever be regarded with more veneration by the votaries of freedom, than the wisest maxims of antiquity.

Upon the subject of the tenure of the judges of the courts of the United States, I can find no more able illustration than the following. It is from the pen of John Rowan, an eminent lawyer, and formerly a representative in the senate of the United States, from the state of Kentucky

"The judges therefore should be constrained to carry the laws into effect. The power of the law, and the power of constraining the judges to carry the law into effect, consist alike in the will of the people. The judges, therefore, should be dependent upon the will of the people—and independent of every other will whatever, except that of Heaven. And this *dependence* upon the will of the people, constitutes (strange as it may seem to superficial observers) the independence of the judges, so much talked about and so little understood.

"The patriots who framed the constitution of the United States were strongly impressed with the multiplied evils which had resulted to mankind, from the want of integrity and independence in the judicial department of their various governments. The cruelties and corruptions which had marked the dependence of the English judiciary upon the king, were vivid in their minds; the fate of Sidney, Russel, and other votaries of liberty in that country, was no doubt ascribed, and justly too, to the servility of the judges to the king.

They overlooked unhappily the discovery which the English had made, and, in their zeal to render the judges independent, have made them absolute. They have placed them, by the constitution, more independent of the executive department, than they were of the king, anterior to the thirteenth of William the third, and even less responsible to the people than they were then; for then, when the people could neither remove the judges, nor regulate or reduce their salaries—they could reach and punish their obliquities by an act of attainder—a measure, to which the enormity of judicial malversation constrained them sometimes to resort —a measure, resulting from the power created by the social compact, and not interdicted either by the form of their government, or their Magna Charta; a power, never used by that nation, but for the protection of the liberty of the people, against official encroachment—a desperate remedy administered only in a case of desperate disease—a remedy which has fallen into disuse in that country, since their judges have been *tamed* and made the *guardians*, instead of the *assailants*, of the rights and liberties of the people. The exercise of that power is wisely negatived in the

constitutions of the states. The judges of the United States then, unhappily for the states, were more independent of the people than, were even the judges of England, while they belonged to the king. There the punitory power of the people, when they were agonized by judicial iniquities, and only then, could reach the judges. Here they cannot be reached effectually by either the *punitory* or the restraining power of the people.

What a beautiful commentary! What an eloquent exposition of the alarming and dangerous tendency of a life judiciary! The page of history is darkened with the crimes of judges, and warns us not to clothe them with absolute power.

Look to the history of England! Did the ermine shield her judges from temptation and corruption? Did it prevent Jefferies from playing the tyrant, or Crowly, Davenport, Chancellor Finch, and Berkly, from attempting to subvert the liberties of the people? Does the dark record of judicial crimes prove them to be above the frailty and passion of human nature? The English people did not think so, when the Empson's and the Dudley's were found guilty of exactions;—when Sir Robert Terselean, chief justice of the king's bench, Sir Robert Belknap and Chancellor La Pole, expiated their crimes upon the scaffold or by banishment! They did not think so when Sir William Scroggs, chief justice, and Sir Richard Weston, baron of the exchequer, were impeached.

Who does not now feel apalled, after the lapse of centuries, upon reading the judicial debasement of Lord Bacon? Bacon, the master-mind of his age—the founder of a new school of philosophy—the splendor of whose genius and the vastness of whose attainment have been acknowledged by successive generations—pleading guilty to the charge of bribery and corruption in his office of chancellor.

The gentleman from Philadelphia, (Judge Hopkinson) after an historical illustration, and in conclusion of one of his passages of eloquence, says "your judges have always been troublesome to despotism."

Sir, is it so?

To whom has English history given, with greater justice and propriety, the appellation of despots, than Charles I. and James II? Yet who does not know that some of the greatest judges which England has produced, were the servile instruments and accomplices with which those tyrants effected their purposes. Mackintosh, in his history of the revolution, speaking of the character of James II. says:

"James affected to be above the law and was therefore a tyrant. * * * * But, discarding as a delusive phrase, the maxim that the king can do no wrong, and holding James responsible, of right, as he was held, in fact, still he was not the sole criminal, but the accomplice, and, in some measure, the victim of *corrupt* and *craven* judges, and of an anomalous system of jurisprudence, which allows judges to *make law*, under the name of expounding it."

Need we seek, in the records of other times and other countries, for examples that admonish us to be cautious in guarding against undefined and irresponsible power. They exist in our own country as beacon-lights to point out our true course.

Who has not seen a judge, maudlin in his drink, occupying the high seat of justice, and wielding the sword of the law—now striking down the innocent, and now the guilty, as may suit the capricious whim of a besotted intellect? And when the community, revolting at the spectacle, petition the legislature for his removal—who has not seen the same judge appealing to the sympathies of his friends, appear before that tribunal with eloquent council at his side, and receive an unanimous acquittal? Who has not seen an ambitious judge—hearing at the distance, the din and bustle of the comitia, rush from the bench, and eagerly join in the bitter strife and angry turmoil of conflicting and infuriated parties? What, though an indignant people might clamour—what, though the press, in tones of thunder, might denounce him—he smiles at the storm, conscious that he holds his office by a tenure that no moral obliquity and nothing but death can dissolve.

Is it not enough that we place our judges upon an eminence, far above the sympathies of the people—must we also clothe them with armour for life, that shall shield them from all the vices in the moral code, and all the infirmities "to which flesh is heir."

It has been said by some gentlemen, that under the present judicial system, many able judges have adorned the bench, and exalted the character of the state.

Allow it to be so. Is it any argument in favor of the system? Is it not rather a compliment to the bar which has trained and educated them, and to the state which has honored and cherished them. Sir Thomas Moore, Sir Edward Coke, the oracle of the law, Burleigh and Walsingham, the greatest of English statesmen, once presided as judges in the court of star chamber. Yet, would any one think on that account, of eulogizing that court of criminal equity, as it was styled in the quaint language of the day. Has not rather the universal opinion of mankind consigned it to merited obloquy and infamy.

Men of integrity, decision of purpose, purity of character and high legal ability, will form good judges under any system.

Will the limitation of the tenure to a short term of years, destroy the independence of a judge? I do not believe it. Independence is a quality of the mind, and will not be affected by circumstances. Its possessor will exhibit it under any tenure. It will place him above the frowns or the flattery of power.

Regarding only his conscience and his God, and pursuing the rectitude of his intentions—it will nerve him to do justice, although the stormy and threatening wave of passion should dash against him, and temptation beset him on every side.

To us, who are about to vote for this principle, it is a proud reflection and a spirit-stirring incentive—that we are merely following in the footsteps of the fathers of the republic, who, nearly three quarters of a century ago, first proclaimed it in the constitution of '76. The Pennsylvania patriots of that day adopted it, and affixed to it their hands and seals. It is the great *Pennsylvania principle. Its parentage* was of the most illustrious kind. For the members of that convention were no ordinary men. In it, were soldiers of the revolution, who afterwards carried the

flag of their country to many a victory—in it, were statesmen whose acts have emblazoned the escutcheon of a nation's glory.

Its birth place, too, was in the camp and trying scenes of the revolution. Then, invading armies were traversing the plains, and heroic ardor burned in the breast of every man. Then there was no hot ambition, struggling for place and power—no fierce party strife—no petty calculation of political chances. The flame of patriotism burnt pure and bright—not dimmed by any selfish motives or dishonorable desires. Indeed, it will be a glorious event, if here we can re-assert and re-establish a principle first ushered into the world, at such a time and by such men.

That principle is the union of judicial independence and judicial responsibility. The rock of freedom! The impregnable fortress of civil liberty!

Upon this question I may err. But to me it will be a proud consolation that I err with some of the best and purest men that ever adorned this country.

If I err—I err with Nathaniel Macon—I err with Thomas Jefferson—I err with Benjamin Franklin, and his illustrious compatriots who formed the constitution of 1776.

On motion of Mr. Woodward, the committee rose, and reported progress; and,

The Convention adjourned.

FRIDAY AFTERNOON, November 3, 1837.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'Sherry in the chair, on the report of the committee to whom was referred the fifth article of the constitution.

The question being on the amendment of Mr. Woodward, as amended on motion of Mr. Dickey,

Mr. Sturdevant, of Luzerne county, rose and said: Mr. Chairman, it is not my desire nor intention to occupy any great portion of the time of this committee. I am aware that the committee must be in some degree fatigued with the length of this discussion. I am also, fully sensible that, in the remarks I am about to offer, I shall be able to add very little to the general stock of information which has been brought into this debate. I am satisfied that, after having listened for a number of days, to the lucid arguments of gentlemen of experience and talents, who have preceded me, the committee will not be disposed to pay very close attention to any thing which may fall from me. It is, however, a right—it is

a privilege here, Mr. Chairman, which belongs to every man on this floor, to express his views on all subjects which may be brought up for the deliberation and decision of this Convention, and to be able to place on the same record as well his name, as his reasons for any vote which he may give. And, I could not, Mr. Chairman, consent to change this important feature in the constitution of our state—a feature on which so many great and vital interests of the people of this commonwealth are suspended—without, in the first place, giving my views, and the reasons which have suggested themselves to my mind, why it is right and proper that this change should be made.

I confess, sir, that I have been almost persuaded to vote on this question, in a manner different from that which my reason dictated. I confess that I have been almost persuaded to rank as one among the number of those, who would stand by the constitution under which we have lived and prospered during so long a series of years, and it is with a sincere reluctance that I am compelled to change my opinion. It is with sincere reluctance that I am compelled to vote for a change of that constitution, which has been handed down to us by our fathers, and which was originally the product of minds capable of forming a constitution suited to the wants and happiness of our people, and abundantly capable, also, to judge of the effect of the constitution which they offered to us. I have been taught from my infancy, Mr. Chairman, to revere the early institutions of my country. I have been taught to frown upon any attempt at encroachment upon them—and to defend them from any innovation which might have a tendency to take away from the citizen any portion of his liberties, or his rights. It is, therefore, with great diffidence that I have been induced, on a full investigation of the merits of this question, to sanction in this Convention, or to record my vote, as a member of this Convention, in favor of, any change in any feature of the constitution of 1790. Sir, the constitution of 1790, has been very justly eulogized—not more justly nor properly, than the men who formed it, have been eulogized. There were, indeed, great names attached to that constitution. It was formed at a time when we were in a measure free from party bias, and from those angry influences, which are so apt to distract the councils of men. It was formed, too, at a time when we could bring into requisition the services of men who had had much experience in life. They had lived, for years, under a constitution different from that which they sent forth to the people. They had lived under a constitution which was very similar, in this feature of the judiciary, to the one which the majority of this Convention is now inclined to give to the people. They had tried, fully tried, the constitution of 1776; they had most unquestionably become dissatisfied with it, and they desired that a change should be made. Under all these circumstances, I am compelled to acknowledge that the constitution of 1790, was formed with the best of motives, for the security and the happiness of the people. I cannot justify myself in coming to any other conclusion. It was thought that that constitution would continue to be entirely satisfactory to succeeding generations, that we should continue to prosper under it, and that we should with great reluctance consent to change it.

However, Mr. Chairman, from the beginning—or, at least, very soon after the constitution was made—for, I believe, it was not submitted to

the people, as the constitution framed by this body must be, for their approval or rejection—I say, soon after it went into effect, there was a difficulty in relation to it. There were those who made strong objections to it—and there were some, I believe, who went so far as to say, that portions of it were not congenial to the people. There were some who went so far as to say, that this part of the judiciary would not act satisfactorily on the people; and, from that time to this, not a year, not a day has passed, in which we have not seen petition after petition—remonstrance after remonstrance—and suggestion after suggestion—pouring into your halls of legislation, asking for a change in the constitution in this particular. The legislature have had ample experience, that the people were dissatisfied at various times. Provisions have been made by the legislature to effect amendments to the constitution; but, in consequence of some unfortunate features in these provisions, it was not found practicable to carry them out. The people would rather submit to the constitution of 1790, with all its objectionable features, than they would give their sanction to one which might be formed, and over which they might afterwards have no control. But, sir, the voice of the people has, at length, been heard. I say, their voice has been heard—we are sent here as the representatives of the people, and we are bound to pay regard to it. We are bound to present a constitution differing in some material features from that, under which we now live. Objections have been made to the people having any influence in this matter; and, sir, we have been told by a gentleman in the course of this debate, (Mr. Forward) that the constitution was framed to protect the minority, and not the majority. And grievous complaints have been made against this majority, Sir, it has been my fortune to know what it is to be in a minority. I have nothing to learn on that score, but, I say, that wherever a majority is found, it is the duty of the minority to submit to it—and to submit even where the majority does wrong, because it is sure finally to do right.

To whom are we indebted for our glorious revolution? Are we not indebted to a majority? To whom do we owe our success in that sacred cause? Do we not owe it to a majority? To whom are we indebted for the constitution of the United States? Are we not indebted to a majority? To whom are we indebted for the wholesome laws under which we live? To whom are we indebted for the many rights and privileges which we now enjoy? Are we not indebted to a majority? We must submit at all times to the majority—and if they should go wrong this year, they will go right the next, or, in all probability, another majority will rise up and take their place. The members of this convention are entitled to the honor of their seats here, by the election of a majority; we are bound to respect and regard the will of that majority, and if the majority are dissatisfied with our proceedings here, we shall hear of it through the ballot box. We shall learn in time whether they are satisfied or not. I am, therefore, inclined to believe that the people have a right to be heard on this subject—that their complaints, which have been so often repeated, and to which we have paid so trifling a regard, ought not to be disregarded—and that we shall find it absolutely necessary, however disinclined we may be to do so, to pay respect to this majority—to this voice of the people. I acknowledge, at the same time, that it is with much reluctance that I abandon a single provision of the

constitution of 1790—or make an experiment of a substitute, and ask the people to accept it. Sir, we live in days of experiment; if the people are desirous of a change, we must give them the opportunity of trying it, and if they find they have erred, they will finally correct the error themselves. Much, very much, has been said, and justly said, about this provision of the constitution of 1790. We have been referred to the history of almost every nation in the world—to the history of ancient as well as of modern nations. We have been asked to turn our eyes to examples here, and examples there; but, as it appears to me, it is not necessary to go beyond the limits of our own republic for any informrtion on this subject. It is not necessory for us to go to the country of Aristotle, or of Cicero, to gather the opinions of the men of those days. It is not necessary for us to go to France, nor to Spain, nor to Rome, nor to Italy, to gather information there. For my own part, I would give more for the opinion of a tenant of a thatched cottage, if he were a citizen of our own county, than I weuld for all the learned opinions of Aristotle. Sir, it is entitled to more respect, if for no other reason than that it is the opinion of experience. These great men lived in a different age of the world, when the genius of all human institutions was far different from that which predominates at the present day, and consequently, they had no means of forming a judgment calculated to direct our course. Our opinions are formed entirely from the circumstances attendant on the peculiar institutions under which it is our lot to live—and the opinions of men, living under far different institutions—however highly I may respect their judgment on other subjects—can not have any weight with me on this. I cannot be regulated by the opinions of men who never had any experience, nor even any opportunity of testing the practical effect of the opinions which they formed. I would much prefer to examine our own minds, and to take counsel of them. I would much prefer to ask of the experience of others who have lived, and felt, and been governed and proted by the constitution of 1790, than I would ask the opinions of those who can know but very little about the matter.

It has been said, Mr. Chairman, that the government of England, during the protectorate of Oliver Cromwell, was somewhat similar to this; that it was a democracy—and that, as the system which we are now about to introduce into the commonwealth of Pennsylvania, was the same as that, we should draw from the history of those times, a lesson that it was unwholesome, and not adapted to the good of the people. Sir, this argument would have been good enough, if the comparison between the two countries could have been kept up. But we are not able to make a comparison between the government of Oliver Cromwell and the government of our own country. It certainly does appear to me, that the history of the protector Cromwell, whatever he may have done in the exercise of his power—however he may have removed the judges—or however many innocent persons he may have sent to prison, cannot or should not, throw a shadow of doubt over our minds on this subject. It is our design, by the amendment which we propose to the constitution, that our judges should be appointed for a certain number of years, instead of securing their appointments during good behaviour—or, in other words, for life—for it amounts to that—as is provided under the existing constitution of 1790. What that number of years may be—longer or shorter—I, for

one, do not feel very solicitous. It is desired that the judges of the court of common pleas should hold for a term of years shorter than that of the judges of the supreme court; but on this point, also, I do not feel very anxious. To my mind, sir, it appears, that a judge appointed to office during a limited term of years, and appointed, too, "by and with the advice and consent of the senate" of our state, cannot well be compared with a man who held his office at the will and pleasure of Oliver Cromwell; and I think that so far, therefore, the argument must fall to the ground.

Look at the constitution of the United States! Look at the men who formed the constitution of the United States! I believe that that instrument was formed by men, such as we have not in these days, in which we live—men formed—chiselled out—if I may be allowed the expression—for the purpose of exercising over our land an influence which, even at this distant day, has not lost its power. I admire that instrument as much as any man—I admire the great wisdom and forecast which is there exhibited; but it is alleged (as an argument) that the same provision as to tenure which exists in the constitution of the state of Pennsylvania, is to be found also, in the constitution of the United States. I have not closely examined this point, but I will explain the idea which has occurred to my mind. The constitution of the United States declares, that the executive "shall have power, by and with the advice and consent of the "senate, to make treaties, provided two thirds of the senators present "concur; and he shall nominate, and by and with the advice and consent "of the senate, shall appoint ambassadors, other public ministers and con-"suls, judges of the supreme court, and all other officers of the United "States, whose appointments are not herein otherwise provided for, and "which shall be established by law." [See constitution United States second section, second article.]

And it is declared in the second section of the third article of the constitution of the United States, that "the judicial power shall extend to all "cases in law and equity, arising under this constitution, the laws of "the United States, and treaties made, or which shall be made, under "their authority."

Now, Mr. Chairman, let me suppose a case by way of illustrating the manner in which I dispose of this question in my own mind. Let us suppose, for example, that a favorite treaty or measure of general government, is made by and with the advice and consent of the senate. Suppose that some question should be raised as to the constitutionality of the words of the treaty, and which is to be decided by the supreme court of the United States. The question is brought before the judges of that court. Is it not necessary at the time that these judges should be independent of the senate, or of the appointing power? Sir, it is absolutely important and indispensable. Well—this is a case which can not arise under the constitution of the state of Pennsylvania, although it may very often arise under the constitution of the United States. And this case strikes my mind as a strong reason why the constitution of the United States should contain this provision for the tenure of the judges during good behaviour, and not for a limited term of years, as is now proposed in our state constitution. It is obvious to my mind that the necessity

which exists in the one case, does not exist in the other; and, for that reason, the same arguments will not apply.

But again, Mr. Chairman: It has been alleged by members of this body, who are desirous that the constitution of 1790 should continue to be the fundamental law of the land in its present form, that it is necessary that the judges of our courts should be entirely independent of all external circumstances, which can possibly operate upon them; and the gentleman from the county of Franklin, (Mr. Chambers) is not able to see any reason why, if we elected the justices of the peace, we should not, on the same principle, elect the judges of our court also. The gentleman said, and said with much truth, that the justices of the peace exercise great control over the people, that they were an important part of the judiciary of our state, and that he saw no reason why we should not elect the judges, if we consented to elect the justices of the peace. I believe I did not misunderstand the gentleman.

Mr. CHAMBERS begged leave to explain: He had been misunderstood, he said, by the gentleman from Luzerne, (Mr. Sturdevant). He (Mr. C.) had imputed inconsistency to the colleague of the gentleman from Luzerne, (Mr. Woodward) in this respect; namely, that that gentleman and his friends had expressed the opinion that the justices of the peace were an important part of the judiciary, and not distinguishable from the judges—and yet they were in favor of the election of the justices, when they would not recommend an election of the judges. He (Mr. C.) considered the justices of the peace to be, nominally, a part of the judiciary, but as being distinguishable from the judges.

Mr. STURDEVANT resumed. I accept the explanation of the gentleman. However, although he might not have been in favor of the election of the justices of the peace, he could see no reason why the election should prevail in one case, and not in the other. The justices of the peace, for instance, are elected from among the people. The people are personally acquainted with them. They form an opinion at once, how far a man is to be trusted, and he is to be elected only for a short term of years. Suppose the people should make the attempt to elect a judge in the same way as they would elect the justices of the peace, and that they should proceed in their several counties or districts, to the election. Is it not of the greatest importance that a judge who sits in a particular district should come from some other portion of that district? Take a lawyer, for instance, from the midst of his clients and cases, with which he has been connected for years, and place him on the bench in that particular place. Would not this be highly improper? Would it not be highly improper to take a lawyer right from among them, and to make him a judge, when, probably, he might be concerned in the very cases which are down on the list for trial? This, in my view, is an insurmountable difficulty, although it is a difficulty which will not prevail in the election of the justices of the peace. And it is absolutely necessary that this feature in the judiciary should continue in its present form. I am persuaded that an alteration in this respect would not answer any beneficial purpose.

But, Mr. Chairman, it has been said that, if your judges are appointed by the governor, by and with the advice and consent of the senate, they will be under some political influence and excitement, that they will, in all probability, be violent political partisans—that they will always feel a

deep interest in politics—that they will always be looking to the attainment of higher places through the means of political influence—that they would desire a re-appointment, and would thus find it necessary to connect themselves with some of the political parties of the state.

Sir, I can not see that there is any force in this reasoning. If it is good in one instance, it is good also in another. If it applies, in any degree, to a judge who holds his office during a term of years, it will apply, with much more force, to a judge who holds his office for life, or during what is called the good behaviour tenure. If a judge is ambitious for promotion, he will be quite as likely to be so, when he is beyond the reach of the people, as when he must submit himself to the people, or to the senate, once in every seven or ten years for a re-appointment.

It appears to me, Mr. Chairman, that a judge who is appointed for a term of years, if he should desire a re-appointment at the end of that time, has only one plain and straight-forward course to pursue—that is to say, he must conduct himself like an upright, an honest, and an independent judge. I do not believe that the people would turn their back on the claims of such a man as this. A judge who rigidly pursued this course of conduct—who abstracted himself from party politics and party feeling —would be much more likely to procure a re-appointment, than if he suffered himself to be drawn into the political extitement and difficulties of the day—because we know that, in most of our counties, politics, or those who advocate different sides of politics, are generally very equally divided.

Now, let a judge attach himself to any one particular party, and let him be convicted of having made an attempt to hear and adjudicate a case against one of the parties, in order that he might secure a place in the favor of the ruling party of the day—whatever that might be—would not a cry from the minority be raised at once against such unrighteous proceedings, and would not that cry have the effect, the almost certain effect, of swelling that very minority into a majority ? Would not your senate be deluged with memorials and resolutions on the subject ? Would not the voice of the people be raised in every quarter of your state ? Because the voice of the people of Pennsylvania is opposed to every thing like politics, or the semblance of politics, exhibiting itself on your political bench. Sir, you can here find a judge who connects himself with the political contests in the day, who is a popular man in his district. In the course of my life, I have known many political judges, but I never yet knew one of them who was a popular man. And this, sir, is precisely as it should be ; because it is against reason, it is against good sense, it is against every sound principle of our government, that a man who holds the high responsible trust of a judge among our people—a man to whom, by virtue of his office, are entrusted the liberties, the property, the rights and the lives of our citizens, should be a political character—governed by political motives—excited by political feelings, and influenced by political interests. No judge of this description can sustain himself among us. It appears to me, Mr. Chairman, that a judge, if he desires a re-appointment, has a much better chance to secure that end by pursuing an independent and an honorable course—than by placing his expectations on the ground of party feeling and party servitude.

But, let us look for an instant at the life of a political judge—of a man

who is mounted on the back of the people—who is thrown and forced upon their shoulders, *nolentes volentes!* a political judge! a bar-room squabbler—a judge who is designed to do any dirty work that may be put into his hands? How are the people ever to get rid of such an incubus? To whom are they to go for redress? Shall they apply to the legislature? Who will take upon himself to do so? What charges can be brought against him? And by what means will you sustain these charges? The judge will rise up to answer you, and will say, I have a right to vote, as much as you have—I have a right to talk of your town meetings, as much as you have—upon what ground do you undertake to interfere with my rights? Every man in the legislature would accede to the truth of this position—and yet this very judge is disgracing, at the same time, his office and his party, by the low course he is pursuing, and there is no remedy to be found for such conduct, save by that remedy which eventually comes upon us, and which will finally reform all of us.

I have not myself, Mr. Chairman, had the benefit of much experience in these matters having reference to the judges—I have not been at the bar long enough to obtain that experience, and I come from an obscure corner of the state of Pennsylvania. But I have nevertheless seen things happen, and seen judges upon the bench who, if they received, according to their merits, deserved to be any where else than where they were—judges who would have been more appropriately seated in the criminal box, than on the judges' bench. And yet, sir, to the decisions of men such as these—unworthy, in every sense, of the high office which they only disgrace—the people of this commonwealth are bound to submit. I know of one particular case, when a dozen witnesses accompanied by their attornies, have travelled for a considerable distance to attend at a court. There happened to be a snow storm, through which any man might have travelled, but that snow storm was the means of losing all the expenses of the parties—the witnesses and attornies, and for what reason? Because the judge stayed at home, at the fireside, to drink whiskey toddy? This is only a solitary instance, within my own immediate and personal knowledge, but you might find the history of many similar cases, if you will take the trouble to make the inquiry. And yet, Mr. Chairman, there was no means by which we could get rid of this unfaithful judge, although I believe that nine-tenths of the people in that county desired that he should be removed. They complained, often and often, and he professed his intention to resign his office at a stated period. But the time allotted came round; he did not resign his office, and I shall be much mistaken if he ever will.

So far as relates to the re-appointment of a judge, after the expiration of the term for which he holds his office, I have myself no very great desire that a judge, when he has served seven or ten years—and added something, it may be, to the glory and dignity of his state—I say I have no great desire that he should be re-appointed. I would have him, however, desire and hope for the re-appointment—and I know of nothing which would be better calculated to stimulate him to the upright and faithful discharge of his duties. But there would be another man found ready to fill the office, quite as good, and quite as honest and upright as himself. I have no doubt that such would constantly be the case; but if it should happen that no better man, or none equally as good, could

be procured, he would unquestionably be re-appointed. If he was not faithful and just, I feel equally sure that he would not be re-appointed. Do but give to your judges, a salary which will make them tolerably independent and comfortable in the world—and, my word for it, there will be no sort of difficulty in procuring the services of judges quite as good, as honest, and as independent as the people could possibly desire to have; for I regret much to say, as a general thing, that you could not find more than some half a dozen lawyers in each of your counties who would not preside over your courts, quite as well as some of your judges who preside at this day. The very moment that you appropriate to your judges a salary, which will render them tolerably independent--a salary out of which they may be enabled to lay up something for a rainy or tempestuous day--from that hour, rest assured, you will experience no difficulty in securing honest and independent judges. It has been said that a man will not abandon his profession as a lawyer, for the purpose of being elevated to the judicial bench, if you change this tenure from good behaviour to a term of years—that he will prefer, if he is in the enjoyment of a good practice, to cling to his profession. This, I believe, would be true in most instances, unless, in resigning his practice to take his seat on the bench, a man could be certain that he would receive something like an equivalent for the abandonment of his profession. If this could be so, I have no doubt that all difficulty on this score would at once be obviated. Suppose, for instance, that a man was appointed to the judicial bench at the age of forty or forty-five years. By the time the term of years for which he was appointed, would have expired, it would be time for him to retire from all business. Or, suppose that he was appointed at the age of thirty years. At that time of life, he would accept the office, in the hope that he would be re-appointed, at the expiration of his term, and he would certainly endeavor to pursue such a course of conduct as would best tend to secure his re-appointment. We may talk as much as we please, about parties operating on the action of the governor and the senate, in their appointments to office; and it has been alleged here, that a governor, holding his office by the election of the votes of a majority of the people of this commonwealth, would nominate to the senate a man who was incompetent to the office, and whose only recommendation was, that he was slavish enough to bend his knee to executive power, and to do the dirty work of the party through whose influence he might hold his office. Sir, I cannot think this possible of any governor of our state. I cannot think that the people would aid in the election of any man who, they had reason to believe, would disgrace the office bestowed upon him. I cannot believe that the senators, who are elected from every portion of our state, would sanction the appointment of a man who was totally incompetent to discharge the duties of the office. Sir, I am young and inexperienced; and there are many other gentlemen, members of this body, who are much more competent to form an opinion on this subject than I am. But I must see, before I can believe. I will not consent to pin my faith, in this matter, to the sleeve of any man. I cannot believe that our senators are so utterly corrupt and abandoned, as, with their eyes open, and, in the full knowledge of what they are doing, to appoint a political gambler to offices of high trust and honor in this commonwealth. Sir, I believe that if such an attempt were to be made, they would soon find themselves rebuked. I do not believe that the peo

ple of this state would, for a moment, countenance such profligacy. We have been referred, Mr. Chairman, to the lessons of experience. It is certainly true, that experience is an advantage, in reference to almost any thing in life; and that it not only sheds its ray of light on the ocean over which we have passed, but that it sometimes flashes before our eye, and enables us to form correct opinions for the future. And, sir, it is this experience to which I am now disposed to appeal for guidance here; I feel disposed to call upon all who have had any experience under the judicial system established by the constitution of 1790, to say, whether they have found any thing in that experience which could induce them to cling to it, rotten and decayed as I believe it to be? However I may be disposed to admire the constitution of 1790—this tree as it has been called, which has grown up, and by which we have been protected, as from the turmoils and the storms of party—however much I may have admired it in its original form and fruit—still when its branches become rotten, as I believe some of them now to be—when they begin to decay—I, as one of the people who are to live under it for good or for evil, will take the pruning knife, and lop off those decayed branches, that the tree itself may once again become vigorous and healthy. And, sir, it is to experience we must look, to guide us in our course; and, from the experience of the fact, it is for us to judge whether the system which we now have, is one calculated in itself to satisfy the people.

Let us look to the experience of some of the sister states of our own Union. Let us not go across the Atlantic waters; let us not look beyond the borders of the land in which we live: but let us confine ourselves to our republic—to the country which is dear to us by every tender association and every tender tie, and with whose institutions we have all become familiarly acquainted. Let us look, then, at the constitution of some of the other states! It will be found, on recurring to the history of these matters, that most of the constitutions which were formed soon after the separation of the colonies from the mother country—or, soon after the declaration of independence, contained a provision, that the judicial office should be held during the tenure of good behaviour; but that, in almost all the constitutions which have been framed subsequent to that time—that is to say, since our people came to understand rightly their own wants and wishes—this good behaviour tenure has been disposed of. The people have lopped off that branch of the political tree, and have adopted, in its place, that tenure for a limited term of years, which the friends of reform in this convention propose now to engraft on the fundamental law of the state of Pennsylvania. Let me ask the attention of the committee for one moment to a few facts in illustration of the position.

Under the revised constitution of the state of Tennessee, the judges of the supreme court are elected for the term of twelve years, while the judges of the superior courts are elected for the term of eight years. This constitution, as revised, was adopted in the year 1834.

Under the constitution of the state of Indiana, adopted in the year 1816, the judicial tenure was established for the term of seven years.

Under the constitution of the state of Mississippi, adopted in the year 1832, the judicial tenure was established for the term of six years.

Under the constitution of the state of Michigan, adopted in the year 1835, the judicial tenure was established for the term of seven years.

Under the constitution of the state New York, which was revised in the year 1821, the judges of the superior court were not to hold office after they had arrived at the age of sixty years; and the tenure of the judges was for the term of five years.

Under the constitution of the state of Arkansas, which was framed in the year 1836, the judicial tenure was established for the term of three years.

Under the constitution of the state of Ohio, adopted in the year 1802, the judicial tenure was established for the term of seven years.

From these statistics, Mr. Chairman, we gather this important fact—that most of the constitutions of the states of this Union, which have been, in late years, framed, or revised, or re-modelled, have adopted the principle of the limited tenure for the judicial office, while most of the states which framed their constitutions about the period of the revolution, or soon after that time, contained the old provision of the constitution of this state of the year 1790, and of the constitution of the United States. Unquestionably, the constitution of United States had a powerful influence with the states, in refereuce to the good behaviour tenure. They did not feel disposed at once to change this tenure—they were not disposed to change it experimentally, and at a time when they were so little acquainted with their own wants and wishes. But the moment they acquired that experience, they changed the tenure during good behaviour, into a tenure for a term of years.

It had been brought about by experience; and that was a guide which at least, if the convention were not disposed to adopt it—would enable him to see his way more clearly. The very reasons which some gentlemen here had given why they would not adopt the guide which he was disposed to be governed by,—that was, the collective opinions of the people of Michigan and Arkansas, as set forth in their respective constitutions—were those which operated with him in favor of it. They argued that the opinions of those two communities were not founded upon formed and settled habits, (coming as they did from all parts of the Union,) and in reference to a perfect and practical knowledge of the working of their own institutions. These facts had led his mind to draw conclusions directly the reverse of these gentlemen. The people of the states referred to, had come from various sections of the Union—had lived under different constitutions, and, consequently, while they fully appreciated their many excellencies, they saw distinctly the several defects of each.

Here, then, was the collected—the united experience of individuals who originally formed a portion of the population of other states. Now, he would ask gentlemen if that kind of experience was not valuable? and, if it was not more important, and with greater propriety, that we should look to the constitution of the little state of Michigan, than to that of any of the older states of the Union? It seemed to him that the

experience, as furnished by these new constitutions, was the best evidence and information which the convention could act upon, in reference to making the amendments to the present constitution of Pennsylvania. Although he had great variety of notes before him, he should content himself with merely glancing over a few of them, as the subject had been already very largely discussed. As he had said before, he was not very tenacious on the subject: the principle was all that operated on his mind. He was certainly particularly desirous to see it incorporated in the constitution. His opinion was that we could not hold up to the people of the commonwealth, a more acceptable and satisfactory provision than the present. He entertained no doubt that they would be unanimously in favor of its adoption, and that they would vote down any constitution submitted for their decision, however unexceptionable it might be in other respects, which did not contain some provision similar to the one proposed. He felt quite assured that they would not take the work of their delegates, elected by them, expressly for the purpose of proposing such amendments as they knew to be desired by their constituents. He believed that the adoption of the new constitution would very much depend upon the making of such important amendments as the one now in contemplation. He freely confessed that he was not disposed to vote for many alterations in the existing constitution—only for such as he was quite sure would be acceptable. He was not willing, as some gentlemen here appeared be, to introduce any party feeling, or party views into this body. And, the very moment that he should witness any thing of that sort, he would loudly and strongly protest against it, let it come from whatever quarter it might. He conceived that their constituents had not sent them to meet in convention, in order to make political harangues, and to create excitement throughout the commonwealth, by indulging in party speeches, but to improve the constitution of 1790, in some particulars.

With regard, then, to the judges of county courts: it had been argued, on one side, that men of considerable experience only. were competent to preside on the bench, as men who were familiar with the practice and mode of transacting business in them. Now, he would ask, what lawyer was there within the sound of his voice, that was not sufficiently conversant with the proceedings of a court, and fully capable of discharging all the duties of a judge? He appehended that there were few, indeed, if any, who were not. This, he regarded as a false proposition made by gentlemen to defeat the proposed amendment. It was natural to suppose that they would resort to every possible argument to effect the object they have in view.

The gentleman from Allegheny, (Mr. Forward) had, in the course of his speech this morning, taken occasion to advert to the number of judges that have been removed from the bench, on account of misbehaviour, and contended that a judge should not be removed, unlsss by the testimony of of two-thirds.

He (Mr. S.) maintained that this course of proceeding would never answer, and that the people could not even hope for redress under it. No judge would be satisfied to have testimony taken against him, many miles from the place where he might be tried. He would want the witnesses to be face to face. And, they would not like to be dragged two

or three hundred miles in order to testify against one of their neighbours.

To attempt to impeach a judge in Pennsylvania was a folly. It could not be done. The people were in consequence, compelled to submit to injustice, to have their rights trodden under foot, and the only hope which they had of obtaining redress was on the death of the judge. They would have to pray for his dissolution, rather than incur the enormous expense and inconvenience of going to the legislature for redress. Now, this wonld be the result of adopting the plan advocated by the gentleman from Allegheny.

If the people could not submit for seven years, they would have precisely the same remedy as they now have. A judge, however, was to hold his office for seven years, and if the people should not desire his re-appointment, they would pour in their remonstrances against it, and send their committees here to request that the judges might not be appointed. It is a remark in Pennsylvania "once a judge, always a judge." He may tyrannize over the people, abuse his commission, as he pleases—may become an aristocrat, a time-serving politician, and he may oppress, disturb, and trouble the people, yet there is no getting rid of him. There is no remedy. These were his objections to the adoption of the plan proposed by the gentleman from Allegheny. He did not anticipate that any thing he could say would influence the action of any delegate on this floor.

It had been his intention, in the course of the discussion, to have gone into the subject more fully, but as it had now undergone considerable examination, and inasmuch, too, as there were so many more delegates, who could do the subject greater justice than himself, he should leave it in their hands. He was but a young member of the body, and had come in almost at the close of the session. Therefore, under these circumstances, he thought they would be doing great injustice to themselves to permit him farther to intrude himself upon their attention. Indeed, it would be unpardonable if he did. He had expressed his opinions honestly, fairly, and candidly, and had, at the same time, also stated the views of his constituents,—at least a majority of them. He hoped that whenever he might find himself, though he wished it might be in majority, and he would endeavor to be there, by every honest means in the his power, yet he should be satisfied whether or not. If, he inquired, a majority of the people of Pennsylvania have asked for this change, will you refuse it? Will you refuse to listen to that voice which has been the prevailing one for a great many years past? Will you deny to a large majority of your constituents the rights to which they are entitled? Will you throw back upon them a constitution which, however much they might once have respected it, they now detest and regard as odious? I would not. I believe that the good sense of this committee, composed as it is, of radicals and conservatives and loco focos, will prevail, and that their deliberations will result in the making of a good, sound, and wholesome constitution. If such a constitution should be sent to the people, take my word for it, if not worth a straw, it will be accepted by the people.

Mr. STERIGERE, of Montgomery, moved to amend by adding the following, viz :

The judges of the supreme court now in commission shall hold their offices until the age of seventy years, if they shall so long behave themselves well. The president judges of the several courts of common pleas, recorders of the mayor's courts, associate judges of the court of common pleas of the city and county of Philadelphia, and judges of the several district courts whose commissions bear date before the first day of April, one thousand eight hundred and twenty-five, shall hold their offices for three years after the first day of April next, and no longer. Those whose commissions bear date on or after the said first day of April, one thousand eight hundred and twenty-five, and before the first day of April, one thousand eight hundred and thirty-two, shall hold their offices for five years from the first day of April next, and no longer. Those whose commissions bear date on or after the said first day of April, one thousand eight hundred and thirty-two, and before the first day of April one thousand eight hundred and thirty-six, shall hold their offices for seven years after the first day of April next, and no longer. And those whose commissions bear date on or after the first day of April, one thousand eight hundred and thirty-six, shall hold their offices for nine years from the first day of April next, and no longer, unless any of the said offices shall be limited by law to a shorter period. The associate judges of the several courts of common pleas, except in the city and county of Philadelphia, whose commissions bear date before the first day of April, one thousaud eight hundred and thirty-one, shall hold their offices for two years from the first day of April next, and no longer. And those whose commissions bear date on or after the said first day of April, one thousand eight hundred and thirty-one, shall hold their offices for four years after the first day of April next, and no longer. But any of the said judges or those hereafter appointed, may be again appointed at the expiration of their terms of office respectively."

Mr. S. said that he would be very brief in the remarks he should offer in support of his amendment. It was said the other day, when a similar proposition was offered, that the proper place for it was in the schedule. He then stated that he did not think so, because there was something of the kind in it already. The object of the amendment was to keep the wheels of the government in motion.

In the last constitution of Virginia, matters of this sort are incorporated in a section of it. He regarded this as a substantive part of the amendment itself: and he confessed, with great frankness, that he was not satisfied with the amandment as agreed to, in two particulars. He had bestowed some reflection and examination on the subject, for some time past, and he had come to the conclusion that the inferior officers should be limited to a period of years. He had read some books which he had found in the legislature of the state, not a great while ago, in which he discovered certain principles laid down as contended for by a distinguished member of this state.

He had, therefore, had some opportunity to become acquainted with these subjects, not from mere newspaper accounts, but from personal observation. According to his information, the complaints which had been made of the courts had been chiefly and, indeed, almost entirely,

confined to the judges of the inferior courts. Very few, if any, complaints, had been made against the supreme court judges. To reform the inferior courts, therefore, was all that was now required. Sufficient for the day is the evil thereof. Let us apply the remedy as far as it is required, and no farther. When the same reasons apply to the supreme court, let the same remedy, by an amendment to the constitution, be extended to it. There had been only one case against the supreme court. In one case there had been an incorrect decision, which had become law in another case.

The case of Judge Peck, of the federal court, had been alluded to. He did not intend to go into a particular view of this question, but it seemed to him to be impossible that any sound man should come to the conclusion that the provision proposed should be extended to the supreme court.

But it ought to extend to all the inferior courts ; not for the reason that they have been found deficient in some respects, but for a great variety of reasons, independent of that. The men who become unfit by age, or by mental aberration, or by bad habits, ought to be got rid of, through an amendment. The proposition was not in conflict with the amendment already agreed upon, because the ages of the judges were such as would not carry them beyond the periods now agreed to. On an average, their time would not be so long as that. Their commissions do not all expire at the same time, and if they did, they would all be appointed by the same executive ; the consequences of which might be, to overturn all the decisions of the courts, to the very great injury of the interests of the commonwealth. We should regard the expiration of the commissions at the same time as very inconvenient. Let some go out at one time, and some at another. They should be divided into classes according to his plan. His amendment divided them into four classes. He had no objection to any other arrangement; but this, it appeared to him, was the best one that could be devised. So far as concerned himself, he would rather vote for the clause, with this amendment to it. Marshall and Kent were probably as well qualified for their situations, up to the last day of their service, as they were when they were appointed. But many other men fail in intellect and physical energy, long before the age of seventy.

These remarks he had made, to explain the nature of the amendment which he had offered. The example of this provision was set by the state of Virginia, and if there should be any objection to it, he would endeavor to obviate it.

Mr. Dickey would rather, he said, that the amendment would not be offered at this stage of the proceeding. The proposition belonged more properly to the schedule, after we had settled the tenure. We shall then be obliged to adopt some provision of this sort. The plan of 1790 was the best one in his opinion—that is, to incorporate all these provisions in the schedule. There it was provided that the existing executive officers should continue to discharge their duties till the month of September, 1791, when their commissions were to expire. We shall also be obliged to have a schedule on account of the representation and classification of the senate.

But, first, let it be settled, whether the judicial tenure shall be a term

of years, or whether it shall remain, as it is, good behaviour. The amendment was entirely out of place at this time. The amendment was a very detailed one, and went into many particulars as to time. It requires time to investigate these details, and it could be best done, after having settled the principles. He thought, therefore, that the gentleman from Montgomery had better withdraw his amendment for the present.

Mr. STERIGERE said, the gentleman from Beaver might have a great desire to have his proposition adopted, independently of any thing else. He (Mr. S.) had the same desire, in regard to this amendment, which he thought a very essential one. He thought now was the proper time for it, and he did not wish to throw the judges into an omnibus with every thing else. While upon the judiciary, we should fix all the details in relation to that department. If the amendment was proper at all in itself, now was the proper time to adopt it. If, then, it should be found that it belonged more properly to another place, it could be easily moved.

Mr. DICKEY: One word more. I should be pleased to vote for the amendment of the gentleman from Montgomery, if it was offered at a proper time, and in a proper place. But I cannot vote for it now. The proposition would draw off the attention of the committee from the principles which are first to be settled, to details which should be considered afterwards.

The question was taken on the amendment of Mr. STERIGERE, and it was negatived.

The question recurring on the amendment offered by the gentleman from Beaver, (Mr. DICKEY)

Mr. BANKS said it was due to the committee, and to himself, that he should offer a few remarks on this subject, though he had given an indirect opinion upon it some days ago. He had concluded not to vote for the amendment, believing, as he did, that it would be better for his constituents, and the people at large, to risk obtaining that sort of reform which would be more in accordance with their wishes, and with their principles.

They wanted a judiciary still more responsible to them, than was offered by the gentleman from Beaver. Many had declared themselves stoutly against the court of common pless, and were anxious that the judges of common pleas should be reduced to a short period of years, while the tenure of the judges of the supreme court was good behaviour, or a term of fifteen years. But he had come to the conclusion that the courts of common pleas required more support and strengthening than the supreme court. The people had more business in the courts of common pleas, and were better acquainted with them than the supreme court. The supreme court was not in so much danger of being assailed as the courts of common pleas.

But he was wholly opposed to the term proposed for the supreme court. The term of fifteen years was so wholly different to what the people expected and desired, in regard to the judicial tenure, that he could not vote for it, for the sake of a compromise. He would be willing to take the amendment in regard to the common pleas. If the term should

be reduced from fifteen years to twelve years for the supreme court it would be more satifactory.

Mr. Read was much gratified to find that the gentleman from Mifflin, (Mr. Banks) had changed his opinion on this subject. He had only risen for the purpose of explaining the effect of the vote which we were about to take, in regard to the vote to be taken afterwards,

There appeared to be an apprehension with some members, that if they vote against the amendment pending, there will be no chance afterwards of voting in favor of a term of years in preference to the existing constitution. Now this apprehension was unfounded. Let all those who are in favor of a shorter term than that proposed in the amendment pending, vote against it, and, if it is voted down, an amendment can be moved to the section which will suit them better; but even if this amendment is carried, there will be another vote to be taken between the amendment and the section of the constitution. If, when this vote is taken, it shall be clearly ascertained that there are a majority in favor of this proposition, it will be time enough then to surrender, without surrendering at discretion now, the first moment the enemy has shown his colours.

He hoped, therefore, that no gentleman would vote for this amendment, under the impression that he would not have the opportunity of voting hereafter in favor of a term of years. Let this question be determined as it may, there will be another vote to be taken.

Mr. Clarke, of Indiana, said, that this was a question which seemed to belong, almost exclusively, to the lawyers; and he was not quite sure but he was intruding, by taking part in it. So far as we had gone, the discussion has been carried on pretty generally by members of the bar.

He once had the honor of being appointed a member of the judiciary committee, in one of the legislative bodies of this commonwealth, along with another member, who was not a lawyer, and upon inquiring of the speaker why it was that they had been appointed on that committee, they were told by that officer that he placed them there, because he wanted two men of common sense on it. Now, therefore, as he could not go into a legal discussion of this subject, and was not disposed to travel through the history of courts in Great Britain, France, and other places, he would take what he considered a common sense view of the subject, and he called upon the attornies of the Convention to controvert, if they could, the positions he was going to lay down. In the first place, he asserted, so far as his knowledge extended, that all new judges were popular. All new judges, for the first two or three years, are very popular. No matter how much their appointment may have been opposed, yet after they are once appointed, and entered upon the duties of their office, they become very popular. Now he asked of gentlemen to look around to all the judges of their acquaintance, and ask of themselves if this was not the case. Well, he took it for granted that it was the case. So far as his observation had gone, it had been universally the case, that new judges were popular with the people;—and why was this the case? Why, in the first place, the old and homely adage, "that a new broom sweeps clean," would apply with great force here; and in the next place, men were fond of change, and of novelty. As Pope says, men are

"Pleased with a feather, tickled with a straw;"

consequently, when a man obtains a new commission, he is full of complacency, and a desire to please all. And whatever may have been the defects of his character, if he has any, it takes some time before they develope themselves, and before they are exhibited to the public; therefore, he makes himself popular for some time after he is appointed. This kind of popularity, however, would be of little account, but the judge makes himself popular in another way. He makes himself popular by his industry and close attention to business. Is this not the fact? He asked every gentleman in this committee, whether it was not a fact, that new judges were indusurious, attended to their business, cleared the docket, and corrected the errors of those who had gone before them. This was one reason, and a plain one, and a good one, why judges were popular at first. But there is another one. Judges, generally speaking, are not taken from the district in which they are to preside. It has been held by some of our governors, that it is better to take law judges from one district, and send them to another, where they have not practised. This he considered a good rule, and he wished it was always followed. They then come into the district where they have no friends or enemies, no loves or antipathies, and they are precisely in a situation to administer justice impartially; and that very impartiality is one of the causes why a new judge is popular. But there is another reason for their popularity. Attornies pay more deference and respect to a new judge, than they do to an old one. They do not take upon themselves to talk about the opinions of the court so much with a new judge, as they do with one whom perhaps they have found the weak side of. Therefore, between the bench and the bar, the business of the court goes on; trials, which have been accumulating for a long time, are reached, tried, and passed upon, and the people get their business done, and it is all owing to having a new judge. The people see this, and, consequently, new judges become popular with them. The people see that the new judge attends closely to business, and that the court meets at regular periods, sits more hours than the old court did, and that business is despatched. They make new rules for conducting business, and let the attornies know what they have to expect if they do not conform to them, and do not take every opportunity to aid in despatching the business they have in charge. There was another reason why new judges are popular. It arises from contrasting them with their predecessors. As he had occasion before to remark—which, by the bye, is a borrowed idea—all we know, is by comparison. By comparing the new judge with the old one, the people draw the conclusion that he is superior. The old judge may, perhaps, have been superannuated; he may have been laboring under some bodily infirmity, rendered incompetent by intemperate habits; or from the fact of his holding a life office, he may have become indolent and careless, and his only want was to get the two ends of the year to meet, so that he could get his salary, and then all would be well with him. It is, therefore, by drawing a comparison between the tardiness and delays and failures, of the old court, and the industry and activity of the new, that the new judges become popular.

Again, an old judge, or a judge who has been long in one place, naturally gets a strong feeling in favor of some men, and as strong a dislike to others,—consequently, it may happen, when a man is brought into court

as a party to a suit, the judge, without even hearing the evidence, will make up his mind that such a man is in the wrong, because he knew him to have conducted himself improperly, or imagined that he did, on some other occasion.

He may say, "Oh, I know that man to be a rogue. I caught him in roguery several years ago."

It is well known that this feeling will grow with men, and it is difficult to root it out.

But we have been told by the gentleman from Allegheny, that if we adopt this system of appointing judges for short periods, that we will be afflicted with the tyranny of the majority. Now, he did not believe any thing like this, but, even admitting it to be so, we lose a little, but how much do we gain? Why, we gain a judge fresh from the ranks of the people—a judge new to them—one they will be pleased with, as they are pleased with all new judges, and one who comes into office with a determination to do his duty.

But, say gentlemen, a judge, when his term of service is about expiring, will look to powerful parties to aid him, and consequently, he will favor these persons; that he will make unjust decisions for the purpose of securing his seat. Why, the judge who would do this, must be a very weak man, and a bad politician.

The true way to obtain popularity, is to do justice. The true way to be popular, is to do strict justice between man and man, so that the most critical observation cannot discover a fault. If judges do this, there will be no danger but they will be continued.

He would ask of gentlemen, how many of our present judges would be turned out, if this amendment was adopted? No gentleman could doubt but what one-half of them, or more, would be continued. Some of them would go by the board, as they ought to; but there are many of them valuable men, whom any governor would appoint.

How did this system of limited tenure operate in Ohio? There the legislature appoint the judges for seven years. Some year and-a-half ago he travelled through a good portion of that state, and he made particular inquiries as to how their system worked. He had conversed with all parties on the subject—with members of the legislature, and members of the bar, and all of those he met with, spoke well of their courts. There were some complaints, with relation to their justices of the peace, but none, as respected their courts; and it was looked upon as a matter of course that all judges, who would do their duty, would be continued.

All this talk about having life officers for the sake of independence, and electioneering judges, if they were appointed for a term of seven years, was a mere bug bear. He had no idea of judges being politicians.

If a judge is a wise man, he will say farewell to politics, so soon as he is appointed, for at the end of seven years, he may not know who will be in power to appoint.

Do we not all deprecate political clergymen and political judges? Do we not all abhor politics in the pulpit, and politics on the bench? Every judge will consider that his surest plan will be to steer clear of politics—

be faithful and vigilant in the discharge of his duty, and depend on the people to bear him out.

But it has been said, that you cannot get members of the bar to serve as judges, if it is only to be for a limited time. He did not believe that this would be the case, where the salary was adequate. He had heard of the office of a judge going a begging in Indiana, but that was because there was no salary, of any account, attached to it. He did not believe that any office would go unfilled in Pennsylvania, where there was a salary attached to it. We all know there are men engaged in the profession of the law, who, when they become somewhat advanced in years, want to get rid of the active and troublesome business in which they are engaged, and such men are always willing to take a seat upon the bench.

He had no fear but that the legislature would provide such salaries as would always induce good men to take the office, so that, in that respect, he did not think there was any thing to fear. He had been in favor of the time named in the amendment submitted by the gentleman from Luzerne, that is, five years for the associate judges, seven for the president judges and ten for the supreme court, and still was in favor of it; but he was willing, inasmuch as the vote of the committee seemed to indicate that there was a majority in favor of a longer term, to compromise somewhat. He would be willing to go for a term of eight years for the president judges and twelve for the supreme judges; and if the amendment now pending should fail, as he hoped it would, if a majority of the committee were willing to come to term of five, eight, and twelve years, he pledged himself, as soon as the amendment should be rejected, to offer it again, precisely as it now stood, excepting making the terms conform to that just indicated. He would immediately offer it in the very words in which it now stood, reducing the terms to eight and twelve years, and that was the highest he would be willing to go. Every consideration appeared to him to dictate that these officers should be made responsible at short periods—that we should have new judges, or have the old one burnished up and ground over, and a new edge put upon them. He had no notion that there was any thing dangerous in this, or any thing which was, in any way, to have evil effect; but he was willing to run the risks of the imaginary evils which gentlemen have conjured up, for the purpose of having the substantial benefits which must inevitably result from this system.

Mr. Dickey rose to correct an error into which the gentleman from Susquehanna had fallen, in relation to the effect of adopting the amendment to the amendment. He could not believe that the committee would vote down that amendment to gratify the gentleman. It would only prolong the discussion on this subject, because as he could not compromise, in any way, in case this should be negatived, and the gentleman from Indiana offers his amendment, he would feel bound to move to amend it by substituting the term proprosed in this amendment, so that the question before the committee would then be precisely where it now is. If, however, this amendment is adopted, there will be another vote to be taken between the amendment and the section of the constitution. He hoped, therefore, that all those who were opposed to an annual election of judges, and who had voted for this amendment, would adhere to it and vote for this time.

Mr. Brown, of Philadelphia county, said that the gentleman from Beaver had twice reiterated this charge, that there are certain persons here in favor of an annual election of judges. Now, no gentleman ever urged such a thing here. It is a *creature of the gentleman's own fancy*. He agreed that all who were in favor of a term of ten and fifteen years, would vote for this amendment, and those who were for a shorter term, would vote against; but the last vote showed that all those who were in favor of life offices, had voted for this amendment. He now wished to repeat, and desired to be distinctly understood, that no gentleman here had ever asked for the annual election of judges. That was not the question brought forward by the reformers here. The question was a tenure of seven years for the county courts, and ten years for the supreme court. Those who had voted for the amendment which had been adopted, all voted consistently,—because they voted for the longest term they could get. Some were in favor of these named, and some were in favor of a life tenure,—but they preferred fifteen to ten years. He, however, called *upon all those who were in favor of a shorter term* than that named in the amendment, to vote against it, and vote it down, and then a new amendment can be offered, embracing such a term as will be satisfactory to all reformers here. There was no disposition here to get any other than such tenure as will be sustained by the friends of reform. He might be in favor of a shorter tenure than that which would meet the views of a majority here, but he was willing to yield up his opinion, and take that time which would suit the views of a majority of the reformers. He was willing to yield up his opinions, and take such time as would suit those who had gone for a reduction of executive patronage, the extension of the right of suffrage, and the election of justices of the peace. Those were the men whose opinions he would yield to, and to those who had already gone for the tenure for good behaviour. He warned the *reformers now, not to permit* the conservatives to build up a structure, as they did on the question in relation to the right of suffrage, which must inevitably fall, and drive us back to the point from which we started. That structure fell, and the friends of reform afterwards built up one which they sustained. This was all that he asked now, that the roformers might have the opportunity of getting before the convention such an amendment as they could all unite upon.

Mr. Woodward desired to suggest the expediency of a compromise between those who held conflicting opinions on this subject. He had moved an amendment to the report of the committee limiting the tenure of the judges of the supreme court to a term of ten years, and of the president judges, to a term of seven years.

The gentleman from Beaver, (Mr. Dickey) had moved an amendment to that amendment, extending the term of the supreme judges to fifteen years, and that of the president judges, to ten years; and a majority had sustained the proposition of the gentleman from Beaver, in opposition to that which he (Mr. W.) had offered. Gentlemen must be well satisfied that there are some who voted for the proposition of the gentleman from Beaver, who would finally vote against all the amendments to the section. He would suggest to the gentleman from Beaver to modify his amendment, so as to make the terms six years for the inferior judges, eight years for the president judges, and ten years for the judges of the supreme

courts. This would probably unite a majority of votes in favor of the change. He had prepared an amendment, in case the present should be rejected; but he submitted whether it would not be better to accept the modification prepared by the gentleman from Fayette, (Mr. Fuller.)

Mr. BIDDLE, of Philadelphia, inquired when the gentleman talked of compromise, on what principle would he exclude the suggestion of any gentleman? He (Mr. B.) would name forty, thirty-five, and thirty years, as the most proper terms of office.

Mr. McDOWELL, of Bucks, moved that the committee rise, which motion was decided in the negative,—ayes 46, noes 47.

Mr. WOODWARD said he was not disposed to shut out any compromise, which could be made acceptable to the majority. But, as he had been told that his proposition was out of order, of course, the whole matter must now fall to the ground.

The CHAIR stated that the gentleman from Beaver, (Mr. Dickey) could not now withdraw his proposition, which, by a vote of the committee, had been adopted into the amendment.

Mr. STEVENS, of Adams, thought it would be better to let the matter stand over until the second reading, and then there would have been time given for a comparison of opinions. What security could we have now, that a sufficient number of votes would be found to unite on any particular term of years? But when the section came up on second reading, any gentleman could move to amend, by striking out the present number of years, and inserting ten, eight and six years. Thus, by a single vote, the question might be decided. It would not be a proper course, at this time, to open the discussion again. Supposing that even this matter of compromise were to be agreed on here,—it would have to be ratified elsewhere. If a particular term should be carried by a large majority of reformers—for it seemed that we were not to be thought of but as reformers—no body was represented here but reformers—there would be a vote to be taken elsewhere, and all ought to be made satisfactory to the people. He would rather see the state convulsed, from one end to the other, than that this change should be adopted,—and he would exert all honorable means to defeat it. He hoped the people would put down the attempt. There might be reformers here who would be ready to pull down the whole fabric of our government; but the question would have to go to the people, where would be found a tribunal somewhat different from this, and which must be addressed in a different manner from this tribunal. He hoped gentlemen would sustain the amendment of the gentleman from Beaver, through the committee,—and then, at the second reading, there might be a change, if any were thought expedient to be made.

Mr. BROWN, of Philadelphia county, said, the gentleman from Adams wished this matter to be left until the question should come up on the second reading. But who would then vote for it? The conservatives would not, and those who desired shorter terms of office would not. The proper time to settle the question was now. He would be glad if the learned Judge, (Hopkinson) would favor the committee with his views on the subject of a compromise. He, for his part, was willing to

go for an extension of the term. But the gentleman from Philadelphia, (Mr. Biddle) says the term must be fixed at forty, thirty-five and thirty years.

M. Biddle said he had only spoken for himself. He had merely made the suggestion.

Mr. Brown resumed: He certainly should be against any compromise which did not embrace the views of all. It must be for the people to make their decision. He had given up all idea of getting the reforms he wished, and was willing to get the best he could. He only now desired that the friends of the limited tenure would sustain the principle before the people. He hoped the term would be fixed now, without waiting until the subject should come up on the second reading.

Mr. Fuller, of Fayette, wished to say a single word as to the vote he should give. He had, last evening, made a suggestion as to a compromise, and had hoped it would be productive of some effect. But it was useless, and he should now vote against the amendment. As the conservatives had drawn the line at fifteen, ten and five years, he was willing, if they could get a majority of the votes, that it should be so; but they would not have his vote. On the second reading, he would move an amendment.

Mr. Dickey, of Beaver, said he too was a reformer, as well as the gentleman from Fayette,—but not quite so radical in his views. He wanted to see the principle of a limited tenure carried out. Gentlemen knew he could not consent to any compromise, because the vote of the house had been taken on his proposition.

Mr. Fuller knew it was out of the power of the gentleman from Beaver to make any change in his amendment,—and he had no reference to that gentleman in his remarks, but to the course of the committee.

Mr. Dickey expressed his hope that the amendment would be sustained.

Mr. Clarke, of Indiana, hoped the matter would not be left, as the gentleman from Adams (Mr. Stevens) had suggested, to be settled on second reading. It had better be done now. He hoped the vote now would put the question in a position in which it might be reached. If this amendment should not prevail, he pledged himself to offer the same amendment as the minority had reported, so as to have a solemn decision upon it. He wanted to get a separate vote on each question. As it now stood, we had to do like the boa constrictor, take the horns and hoofs and all, and swallow it all together. He hoped the committee would negative this proposition in its present form, and he would then offer it in the shape in which he desired to see it.

Mr. Sterigere, of Montgomery, moved that the committee rise, but the motion was rejected.

The question was then taken on the amendment as amended, and was decided in the affirmative. Ayes 62—nays 39, as follows, viz:

Yeas—Messrs. Agnew, Baldwin, Barclay, Barndollar, Barnitz, Biddle, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clearinger, Cline, Coates, Cochran, Cope, Cox, Craig, Crum, Cunningham, Denny, Dickey, Dickerson, Dillinger, Dunlop, Forward, Harris, Hays, Hender-

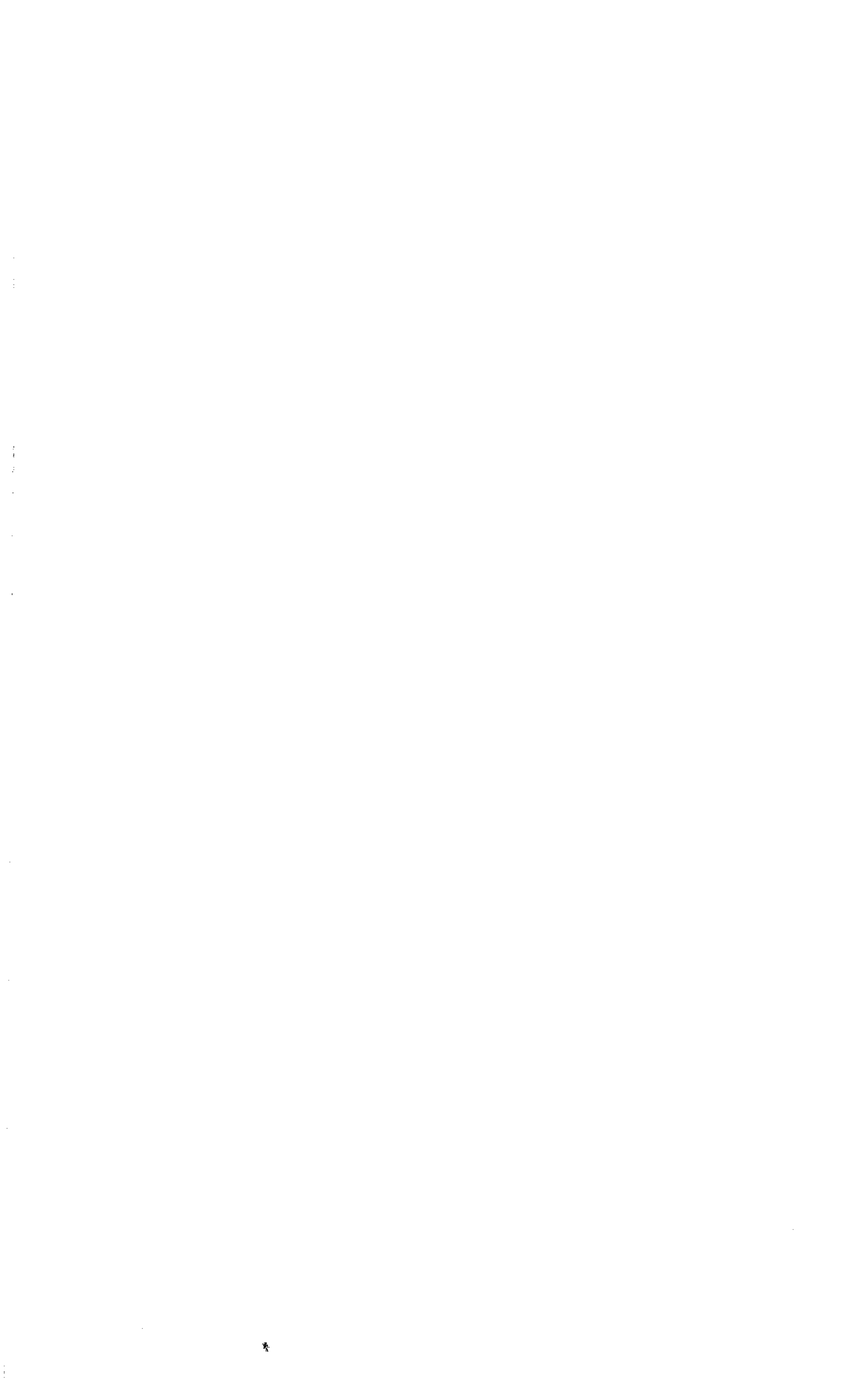
son, of Allegheny, Heister, Hopkinson, Jenks, Kerr, Konigmacher, Long, Lyons, Maclay, McCall, M'Dowell, M'Sherry, Meredith, Merkel, Montgomery, Pollock, Porter, of Lancaster, Reigart, Royer, Russell, Saeger, Scott, Serrill, Sill, Stevens, Sturdevant, Thomas, Todd, Weidman, Woodward, Young, Sergeant, *President*—62.

NAYS—Messrs. Ayres, Banks, Bedford, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Crain, Crawford, Cummin, Curll, Darrah, Earle, Fleming, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helffenstein, Houpt, Hyde, Ingersoll, Kennedy, Krebs, Magee, Mann, Martin, Miller, Nevin, Overfield, Purviance, Reed, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, Smyth, Sterigere, Stickel, Taggart, Weaver. White—49.

Mr. MANN, of Montgomery, moved that the committee rise, which was decided in the affirmative. Nays 57. Yeas were not counted.

The committee accordingly rose, and reported progress; and,

The Convention adjourned.



APPENDIX.

TO FOURTH VOLUME.

APPENDIX. *

Mr. INGERSOLL said, his intention was to listen to the instruction he expected to derive from the discussion of this most important subject, and take no active part till he got from others their better digested views; but, the unexpected turn given to it, by the vote of yesterday, placed him, and probably many others, in a false position, and precipitated him upon the debate before he was, by any means, prepared to do it justice. Yet, he would attempt an argument, addressed altogether to the reason and candor of the committee, studiously avoiding personality and all excitement. If he were even able to be eloquent, he would not on this occasion, and he must take the liberty to say, that the name of WASHINGTON, to overawe us, was as much out of place, as introduced by the venerable and learned chairman of the judiciary committee, as it would be in a charge to a jury or other judgment of a court. Let us reason together, as if we were not in formal session, but sitting under the mild moderation of the gentleman in the chair, (Mr. M'Sherry) we were considering this all important topic, in free and unreserved conversation. I shall be thankful to any gentleman for all inquiries made of me, as I proceed, and, instead of complaining of interruption, will rejoice in opportunities of endeavoring to make myself perfectly understood. I do believe that the convention is open, as I profess to be, to that conviction which may result from a frank interchange of opinions, and there are, probably, many members attached, as I am, to some cardinal principle, but undetermined as to its mode of application, and ready to unite upon whatever free discussion may ascertain to be the best issue.

I feel all the disadvantages under which I address, even a forbearing argument to the committee, on this peculiar occasion. Scarce an unworthy motive can be imagined, that has not already been suggested, as impelling those who plead for reform. On the other hand, it is impossible to speak any thing like the whole truth in its advocacy. In the first place, the utterer of offensive, however honest turth, might be indicted, convicted and punished, as guilty of defamation. And, even if that should not be so, still he must make enemies of the most dangerous kind, for the learned Judge, the chairman of the committee, (Mr. Hopkinson) has told us, that there is no man who does not, some time or other, fall within the power of the judiciary. Judges, he says, are quite as liable as other men to unworthy passions and influences, and I must confess, that I do not feel while discussing them, the natural and proper freedom of debate, in the effert to expose a system by views unavoidably personal.

I agree with that respectable gentleman, in all he says of the impor-

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* See note in page 412.

tance of the subject, which it is impossible to overrate. The judiciary is our Providence of this world. All other political elements are but elements; but this is, so to speak, the representation of DIVINITY on earth.

I concede also, that judicial independence is indispensible to good government; but, I deny, that, in order to be independent, judges must be irresponsible, or beyond the reach of whatever is the sovereignty of the state.

The view of the learned chairman was first historical, and then argumentative; and, I will follow his method. First, with some notice of antiquity; secondly of England, and thirdly of our own country.

FIRST—No such tenure as that during good behaviour was ever known, until after the English revolution of 1688. Let us, therefore, in the first place, do all ancient and modern nations, except England, the justice to recollect that all those wise and established systems of administering law which have obtained among them, together with their celebrated codes, come down to us without the tenure of judicial office which our constitution prescribes. And, while I freely acknowledge, that English justice protects personal liberty, much better than that of other nations; yet, as to property, it is at least questionable, whether it is not as well provided for by the administration of it in Italy, and Germany and France and Spain. We have been reminded to discredit responsible tenures, of many instances of arbitrary judicial proceedings in English state trials, before the revolution of 1688, which there is no need of controverting. But this committee will not forget, that the great foundations of our laws of property, those noblest monuments of English jurisprudence were laid by Coke, Hale, and other judges, whose judicial office was mere tenancy at will, under arbitrary and capricious monarchs. The gentleman from Union, (Mr. Merrill) said something disparaging of the French law, till, by charter, the judges were rendered removable. But, I call his attention to the fact, that the most splendid accomplishment of Napoleon's reign, which will outlive the renown of all his victories, was the code of laws called by his name, framed by judges and lawyers dependent on his will.

SECONDLY—Leaving antiquity and continental Europe for England, let us come at once to the act of 1701, which for the first time, conferred upon judges, the tenure of good behaviour; a vast improvement in their situation, and that of all those who look for impartial justice. But, after all the eulogy bestowed on this amelioration, it was nothing more than a transfer of judicial dependence, or responsibility, from the crown to the parliament, which, in England, represents the sovereignty of the people. In like manner, the French charter contains nothing more than a similar improvement; a great one, to be sure, because it substitutes the nation for a monarch, as the power controlling the judiciary. Since the British revolution, the constant tendency of mankind has been to greater freedom; to take from the sovereignty of one, and confirm that of the community; until, both in England and France, by reforms and revolutions, greater liberty, in some respects, has been established, than many Americans think compatible with even our free government. Voltaire, speaking of queen Elizabeth, says, she loved her people, and then asks, with a sneer, who loves the people? But, whether loved or feared, the people of many

nations have now become their acknowledged sovereigns. We have been warned against their mastery, by historical illustrations of its arbitrary excesses drawn from Grecian, from Roman, and from English history. The delegate from Union even reminded us, that when the author of our religion was accused before Pilate, who was disposed to enlarge him, and told the people, he found no fault in him, that, by their clamorous threats the judge was compelled to sacrifice the Saviour of the world. That gentleman must recollect, however, that Pilot, if a judge, acted from no fear of popular violence, but intimidated by the threats that he would be denounced to Cæsar. It was from fear of Cæsar that he yielded, and not the populace, whom he dispised.

George the Third propitiated the people, by the act of 1762; a transaction, which, as explained in Smollet's History of England, vol. 10, p. 150, appears, to have been a mere matter of salary, and even that allowance postponed till after that king's death, which did not take place, if I am not mistaken, until 1820. It seems, that, till that time, the English judges were paid like other persons of the king's household, and all that was accomplished for their independence by the acts of 1701, and 1762, although certainly increasing it, left them still liable to removal, whenever the parliament addressed the king requesting it. The learned and venerable judge, has repeatedly and earnestly told the committee, that among the best evidences we can have of what is right on this question, are the opinions of learned men. I shall, therefore, ask his attention, and that of the committee, while I read from Boswell's Life of Johnson, p. 175, of 2d vol., what that learned philologist has made known as his opinion; and I cannot refain from introducing it, with the remark, that Judge Hopkinson, or any other judge, by inflexible rule of law, would reject even the oath to a simple fact, of any witness, however unexceptionable as a man, proposing to give testimony, much less, pronounce opinions, in any matter in which he had the slightest interest. The opinion of Dr. Johnson, therefore, as perfectly disinterested, as he was undoubtedly well informed, is entitled, according to the philosophy of this legal rule, to much greater weight, than that of any judge, on this question.

"On Friday, April 14, being Good Friday, I repaired to him in the morning, according to my usual custom on that day, and breakfasted with him. I observed, that he fasted so very strictly, that he did not, even taste bread, and took no milk with his tea: I suppose, because it is a kind of animal food."

So, added Mr. Ingersoll, this wise man was prepared, and predisposed for the best judgment.

"He entered upon the state of the nation, and thus discoursed: "Sir, the great misfortune now is, that government has too little power. All that it has to bestow, must, of necessity, be given to support itself. Our several ministers, in this reign, have out bid each other, in concessions to the people. Lord Bute, though a very honorable man—a man, who meant well—a man, who had his blood full of prerogative—was a theoretical stateman—a book minister—and thought this country could be governed by the influence of the crown alone. Then, sir, he gave up a great deal. He advised the king to agree, that the judges should hold their places for life, instead of losing them, at the accession of a new

king. Lord Bute, I suppose, thought to make the king popular, by this concession; but the people never minded it; and it was a most impolitic measure. There is no reason, why a judge should hold his office for life, more than any other person in public trust. A judge may become corrupt, and yet, there may not be legal evidence against him. A judge may become froward from age. A judge may grow unfit for his office, in many ways. It was desirable, that there should be a possibility of being delivered from him, by a new king. That is now gone, by an act of parliament, *ex-gratia* of the crown."

If I do not misunderstand the English system, it is, in every respect, an improper standard for ours. Notwithstanding the acts of 1701 and 1762, and, abstenious as the crown is, from interfering in private controversies, its influence with the judiciary, is still, all-powerful in state prosecutions. When I was in England, Col. Despard, and his associates, were condemned and executed for treason, upon proof, so slight, that upon expressing my surprise, to our minister, Mr. Kufus King, at what I considered the injustice of the result, he told me, that I must have a very imperfect idea of the power of the crown, if I supposed it could not procure, by judicial instrumentality, a conviction in such a case. About the same time, Peltier was prosecuted for a libel, on the first consul of France, on which occasion again the subserviency of the judiciary to the ministry, was abundantly apparent. Thus, controlled by the crown, English judges, are still more completely controllod by parliament. Their official tenure, is really, that of *good* behaviour. The moment a judge becomes superannuated, or disabled, by any incapacity, for the performance of much severer duties, though better paid, than ours, he is got rid of. He is pensioned off; which relief, is altogether unknown, and probably will be, in our system. The ministerial influence over the judiciary, is, also, very great here, and, I have understood, that no one is selected for a judge, without taking care, that he is of the right party politics. When it is recollected, moreover, that English judges do dot exercise that political jurisdiction, which is considered a principal function of ours, that the house of lords, by appelate cognizance, superintend all the judgments of the courts within the kingdom, and the king in council, as I believe, all those of the foreign provinces, it is plain, that the English system differs totally from our, both as to the tenure and jurisdiction. There the judiciary, influenced by the executive, is strictly responsible to the legislature, and the kind of independence, attempted by our constitution, which was an experiment, altogether untried, is unknown in England, or any other country, as it has proved, on trial, in ours, a vicious system, and a failure.

THIRDLY—I come now to America, and will examine, first, our colonial, and secondly, our independent judiciary in Pennsylvania; thirdly, with some notice of that of the United States, which has been pressed into the argument, as vindicating in principle, that of Pennsylvania.

Judge Hopkinson's mistake in supposing, if he did, that there ever was a judiciary in the colony of Pennsylvania, commissioned during good behaviour, was shown in the excellent speech of the gentleman from Union, (Mr. Merrill) which displayed researches, and developed facts upon this interesting inquiry, as honorable to that gentleman as the candor with which he treated the subject, and may be deemed among the

important advantages which this convention should confer on the community. It is quite clear that no such tenure ever obtained in Pennsylvania, till the present constitution. In page 24, of Shunk's collection, there is a note which might lead to a different conclusion. But, besides the refutation for which we are indebted to the gentleman from Luzerne, (Mr. Woodward) a passage or two, which I will read from the 1st volume of Proud's History p. 305, 6, 8, prove beyond doubt, that Penn, while he lived, never suffered any such judicial authority, but maintained his own, in the most absolute manner. That it was the constant anxiety and endeavor of the people of this state, to enjoy the advantages of an unshackled judiciary, is conceded. But their solicitude was, for judges, like those of the mother country, independent of all influence or control, except that of the people themselves. They wanted judges responsible to them, and not dependant on those in Europe, over whom they had no power, and with whom they had little sympathy. In 1684, it has been shown by the gentleman from Union, that the judges were appointed for two years, and so continued until 1706, when the dispute occured between the deputy governor and the assembly, which has been read from the curious manuscript obtained by that gentleman, out of the archives of the state. The colonial act of 1727, for which we are indebted to him, provides for nothing but the jurisdiction of the courts, without reference to the judicial tenure. In 1743, when the governor removed all the judges of Lancaster county, it is certain they could not have held their commissions during good behaviour. The document produced from the second volume of Franklin's works, in the year 1756, which seems to indicate his attachment to that tenure, implies no more than his solicitude, which, I have no doubt, was common to all the inhabitants of the province, that their judges should hold office, as the English judges did, independent of all control, but that of the people. And the act, of 1759, the manuscript copy, of which we owe again to Mr. Merrill's laudable industry, puts this matter beyond all question, by rendering the judges removable on address of a majority of the two houses of the legislature to the governor. The difference between that system of immediate responsibility, and the irresponsibility of the present constitution, is exactly what is now in controversy in this convention. Let us go back to the provisions of that colonial act, giving the people complete control over a judiciary, commissioned during really good behaviour, and I see no great objection to the system. If gentlemen are disposed to compromise for some such principle as that, they may not find me very tenacious of any other.

The petition of the United Colonies to the king, in 1774, to be found in the Annual Register, p. 203, and the remonstrance of the Americans in London, p. 230, cited by Judge Hopkinson, are of the same character, and do not, I submit, prove what he produced them for. They are colonial complaints of metropolitan tyranny. Their whole strain is, that instead of leaving American judges responsible to the American people, they were rendered independent of them, by either royal or parliamentary abuse of government. The only complaint always was, that popular control was taken away by royal usurpation. There is no question of tenure in these complaints, from first to last. They had no reference to that subject. Doubtless the American colonists desired that their judges should be appointed during good behaviour, as English judges were ; but they had no idea of a tenure beyond the power of the ordinary action of

popular sovereignty, represented in a legislature. That the Declaration of Independence should be quoted for the constitutional tenure, infers a dearth of authority for it, since it is well known, that the author of that declaration, is the apostle of the opposite doctrines, and condemns the life tenure in the following strong terms, which I read from one of the letters published by his family, since his death:

"Let the future appointment of judges be for four or six years, and renewable by the president and senate. This will bring their conduct, at regular periods, under revision and probation, and may keep them in equipoise between the general and special governments. We have erred in this point by copying England, where certainly it is a good thing to have the judges independent of the king. But we have omitted to copy their caution also, which makes a judge removeable on the address of both legislative houses. That there should be public functionaries independent of the nation, whatever may be their demerit, is a solecism in a republic, of the first order of absurdity and inconsistency."

This retrospect brings us to the constitution of 1776, by which the longest judicial tenure was seven years. Having, on a former occasion, spoken somewhat at large of the judicial features of that constitution, I shall not dwell upon them now, And I yield, without reserve, what was labored by the honorable chairman of the judiciary committee, that a large majority of the framers of the present constitution, as well as of those who framed the constitution of the Union, partook of the sentiments so well maintained in the Federalist, No. 78, to which that gentleman refers, that a tenure of good behaviour, according to the American experiment, was the best. On the other hand, I earnestly insist, that it was an untried experiment, of which mankind, under any form of government, had no former experience; and, upon that postulate, I proceed to show that the experiment has signally failed, and that we must go back again to something more like the British constitution, and more consistent with the acknowleged sovereignty of the people. We are in the midst of a revolution. Certainly we are. It is the element of our political existence, a revolution which I trust never will end, yet be always bloodless, a peaceable contest with antiquated establishments, and considerate trial of new ones, popular, economical, fiscal, jurisprudential, legislative, executive and judicial. I wish that James Wilson and Thomas M'Kean, two of the first and most distinguished signers of the present constitution, had voices in this assembly. For I feel confident that they would be among the foremost to declare the failure of their judicial experiment, and to second that reformation of it which is to reinstate the rights of the mass to control all departments of government.

Distilled to a result, what are all the objections of Messrs. Hopkinson and Merrill, but apprehensions of the people, whom they fear to trust with perfect self-government? Montesqueiu is cited to warn us of the dangers of extreme democracy; Marius, Cromwell and Napoleon are paraded as the gorgons of a demagogue licentiousness. Even when the constitutional right of petition is appealed to, by the memorial from Fayette, couched in respectful terms, and praying for none but temperate, and I should say judicious reforms, we are told to deprecate town meeting authority, tavern instructions, and idle resolutions, signed by we know not whom, written no one can tell where.

Like the general of an army, some unprincipled leader gives the watchword, and immediately his followers decry the best members of a commonwealth as aristocrats in one country or federalists in another. Lord George Gordon, at the head of a mob, is made to cry no popery, and rush upon destruction on the one hand, while disappointed suiters, impertinent lawyers, and noisy partisans, on the other, are clamoring against the administration of justice. All this is nothing more than an apprehension we do not feel, and a want of confidence we disown. It can hardly be called argument. It is indeed warning, perhaps wise warning; but it is advice we cannot take, because we have no faith in it. We trust the people. We believe in self-government. Thus far the experiment has never disappointed us.

On the contrary, the farther it has been carried, the better it has worked; and avoiding all rash, wild, and visionary undertakings, we cannot now be deterred, as experience teaches, to carry out, still farther, the great principle of popular sovereignty. We have seen, within the last few days, that in matters of conscience, and of honor, (brought under consideration by the provision against duelling) there are sentiments, and those perhaps among the strongest in human nature which cannot be argued down, or hardly reasoned with at all. Love and politics belong to this catagory. All that we can do, therefore, is to agree to differ with the venerable chairman of the judiciary committee, (Mr. Hopkinson) because our faith is totally different from his. We confide, without fear. He mistrusts, without confidence. We are for reforming back the judicial tenure to something like the English exemplar, and that of our colonial forefathers, satisfied that the first experiment of a less popular tenure has entirely failed, and that we must try another. I agree that we must demonstrate its failure, that we must show how the system may be improved by renovation, and that we do nothing unless we act with the will of the people. For my part, I religiously believe, that the voice of the people is a DIVINE voice, which, once fairly ascertained, is unquestionable, not only in its power, but its good sense and good feeling. I only trust, therefore, because I have implicit confidence.

I think it stands to reason, and is an ordinance of the Creator, that a mass of men must be more rational and less selfish, than any one man; that they are less liable to bad passions, than any individual, and better endowed with instincts of salutary regulation and self preservation. A community must be, a higher oracle of wisdom than any individual, even though that individual, come to be canonized for his virtues, as the father of a country, like Washington himself. And so do my respected friends, the members from Philadelphia, Union, and Chester, (Messrs. Hopkinson, Merrill, and Bell) in all matters of law, for it is only when they come to politics, that they gainsay popular sovereignty. The common law, to which they are all so much attached, is nothing but the common sense of the common people, whose canons and very rudiments every lawyer is obliged, by his professional religion, to prefer, to whatever may be said to the contrary, by the wisest man that can be appealed to. All goverment is but relative good. Much of it is positive evil. Wisdom is often mere foolishness: and, among the little we know, with any certainty, if there be one thing which, above all others, we may be assured of, from the lessons of christanity, of the art of printing, and of America,

it is that too much government is an evil, and too much self-government little to be feared.

The learned and venerable member from Philadelphia, with many others, whose superiority I unfeignedly confess, deny or doubt this doctrine, and I cannot say they may not prove to be right at last. He says that man must be a slave, who in his representative capacity, suffers others to think for him; and to him political pledges are, as he says, inconceivable.

Yet, said Mr. I., the 20th section of the 1st article of the constitution of Michigan, one of the last and best that has been framed, consecrates what is to be found in equally explicit terms, in many of the constitutions of New England, the right of popular instruction, which that gentleman denies to be a right at all. When, therefore, he warns us not to be wiser than Aristotle, Cicero, Bacon and Locke, we differ upon a dividing principle, for I insist that my friends, the three youngest members of this body, (Messrs. Purviance, Butler and Rogers,) are better informed politicians, more practically conversant with the principles of free government, than any of those celebrated personages.

In short, we reformers go by the mass, when their opinion is well ascertained, while the learned and venerable Judge goes by the man, and relies on his individual wisdom. He is for self confidence. We are for self government. And although deference to his better judgment is habitual with me, yet do I feel an unconquerable prepossession that there is more intelligence and patriotism in the state than in this convention, and in any large body of people, than in any select class, or chosen number.

As to Aristotle, I have carefully studied all that he has written, as far as it has been translated into our language, and I brought with me, to this place, to read in the original, for my edification, that fragment which has been preserved to us of Cicero's treatise on a republic. Still I deny the capacity of either Aristotle or Cicero, to teach the youngest American as much as he already knows of the practice of representative government; for neither of those wise men of antiquity had even the most remote idea of that representative principle, which is now so familiar to every child. I deny their authority as a christian, for neither of them could conceive of christian charity; and I deny their authority as an American, for neither of them believed that there was any world west of the straits of Gibraltar.

A lady of my acquaintance frequently reproaches that vulgar sailor, Columbus, for having discovered this democratic continent, and cast her lot so far from those more fashionable regions of Europe, which are large enough, she thinks, at all events, for all ladies and gentlemen.

In short, Mr. Chairman, I demur to the authority of Aristotle and Cicero, because as neither of them was aware of the true solar system, the mariner's compass, the circulation of the blood, the art of printing, or a common newspaper, gunpowder, or the society of friends—whose wives had not a chemise to their backs, nor even had a common pin for their clothes—I am vain enough to believe that we are better American politicians than we could learn to be from their works. Locke failed, we know, in his attempt at a constitution for the state of South

Carolina; and *Judge* Bacon, I submit, is not the man whose name should be held up for imitation, on a question of judicial integrity, and independence.

Last, in this list of personal authorities, a name was introduced, which I have already said, I think should have been left out of view on this occasion. But, as it has been made the subject of an eloquent appeal to the emotions and reverence of this assembly, I shall not hesitate, as I do not fear, to meet such eloquence by simple argument, and plain fact. I, too, sir, like the learned judge, have seen that god-like man.—God-like, he was, in size, aspect, presence, and behaviour, as much as in the noble properties of his spirit, and the admirable discipline of his temper. I can see him now, with a vivid recollection of his personal appearance, as eloquently described by the venerable judge, when he stood up in congress, with, if I mistake not, a sword by his side, and what in Europe is called, a court dress, that is, the garb worn by persons who appear in the presence of monarchs. I never can forget the impressions of such a scene, which might effect a youthful imagination with sentiments that maturer years may somewhat change. Without pretending to determine what is right on such occasions, I shall simply state the fact, that when WASHINGTON's first and favorite secretary, succeeded him in the American chief magistracy, he abolished the royal custom of personal address, and sent a message to congress, which reform whether right or wrong—and I give no opinion on the subject, but, resting my argument on the mere fact, has probably, proved acceptable to fourteen hundred thousand, of the sixteen hundred thousand voters in the United States.

One of the learned judge's illustrations, was remarkably characteristic of the intense directness, with which he goes straight, may I venture to add, and I might say, headlong, to any conclusion he believes in. His wish is, often father to his thought. He set up for our example, the constitution of Massachusetts, from which he read a part to bear the testimony, of such men as Mr. Adams, Mr. Webster, and Mr. Story, to the necessity of that judicial independence, which he thinks we should cherish. But we go to a different school. We do not worship at that shrine. We do not presume to desecrate it. On the contrary, I repeat my profound respect for it. But by instinct, I am unable to bow down before it. Its religion may be the true one. We, who deny it, may all come to repent our error. But till we do, such arguments, shall I be excused for saying, are in a vein of downright simplicity. At all events they fully justify, that by which I would shew, that on great principles, we must sometimes agree to differ.

Such, then, is the platform, on which we propose to place our contemplated reform of the judiciary—to bring that branch of government, in better acceptance with the sovereign power, according to what we believe, is its will. And, really, there is but one difficulty connected with this movement, which is, simply, to ascertain, what is that will. This is no party question, but, purely popular. To quote the learned judge, the people must be the democracy, and the democracy must be the people, in such a question. The candid and manly concession of the gentleman from Union, (Mr. Merrill) spares me much an argument in this ascertainment, for, as he truly said, how came this convention

together, but by the will of the people, expressed in its most legitimate forms? We, the representatives, are here to deliberate, and to devise: they, the people, are there, to ponder, and determine such reforms, as may be submitted to them. The venerable judge has, himself, in strong terms, declared, that it would be madness to resist the people's will, when once properly made known. And can there be a doubt, that they desire their sovereignty to be plenary? Do we not, ourselves, each one, and all of us, wish it to be so? The remarkable quarrel between the speaker and the governor, in 1706, as read, form one of those curious manucripts, which the gentleman from Union, (Mr. Merrill) has brought to light, the colonial acts of 1727, and 1759, the constitution of 1776, the petitions and remonstrances, as shown by the gentlemen from Philadelphia and Luzerne, (Messrs. Brown and Woodward) to have been, continually pouring into the legislature, from the people, complaining of the high judicial tenure, as attempted for the first time, by the present constitution, and our own votes, by one of which, the foundation of the system. Justices of the peace, have been broken up by change, from the irresponsible, to a very dependent tenure, together with the vote of yesterday, by which a considerable majority of this convention, would seem inclined to limit the tenure of all our judges, without exception—all this concurrent testimony, from the very beginning to the end, proves, beyond a cavil, that the people desire to be their own masters, that this conven tion think they should, and not to give that mastary to the judges. The people of Pennsylvania, have always been a peculiar people, in their jealousy of judicial supremacy. They never could be brought to tolerate a court of chancery, which acts arbitrarily, and without what may be called the popular branch of the judiciary department—a jury; and when, at last, within a short time, some chancery powers have been confered by the legislature, on the courts, they take care to associate a jury, with the chancellor; and even so, this power was interpolated at a special session of the legislature, certainly, without the people, or even the profession, being advised beforehand, or prepared for its reception.

Let others say what they may, I subscribe, most cordially, to the patriotic, if you will, the provincial self complacency of the venerable judge, than whom his country, and his state, contain no truer lover, that Pennsylvania is foremost in rational improvement, and not behindhand in intelligence, of all other commonwealths and countries. If this is a prejudice, so be it. It is, at any rate, an honest and delightful one, which I cherish and inculcate, and without which, I certainly would not live in Pennsylvania. Let the lawyers of other states, and it is chiefly they, who, regarding with affected contempt, our palmy democracy, and, I must add, as they deem it, our judicial degradation, have denounced us, as a population of stupid Dutch, and wild Irish, the beotia of America —let them show greater improvements in any of the arts and sciences, of good government, and good society, if they can. I assert, with confidence, and this is part of my political creed, in which, I am very happy to have the concurence of the venerable judge, himself, that Pennsylvania is a model state, and that *more* universal suffrage than other states enjoy, *more* popular sovereignty, than their constitutions allow, the constant promotion of the greatest good, of the greatest number, a system, of which the educated, and the opulent, should be the last to complain, even

though it may deprive them of some of the public honors and distinctions—that these are the springs of our pre-eminence, the pure, popular fountains of our prosperity. By their *fruits*, shall ye *know* them. Within a few years past, New York, on one of our borders, and Ohio on another, by rendering their right of suffrage, still more universal, and their judicial officers still more responsible to the people, than ours, together with other organic improvements, have taken the lead of us in the race of advancement, and it is the duty, as it should be the delight, of this convention, to submit to the people, for their adoption, such improvements, as all experience has testified to be desirable, so that Pennsylvania may regain, by the renovated republicanism of a still more democratic constitution, that rank in the scale of states, which the least rottenness of arbitrary government, will be sure to make her lose.

And here, let me answer, not without deferential respect to that venerable gentleman, but with the most explicit contradiction of his unfounded assumption, the claim which he has set up, of the constitution, to be the parent of the prosperity of this noble commonwealth. Sir, I pronounce it to be grand larceny, to rob liberty and equality of what belongs to them, and ascribe it to government. All the blessings we enjoy, are the offspring of freedom. Too many of the evils we endure are the inflictions of government, government not strictly and generously popular, which, whenever it undertakes to regulate, whatever may be safely left to the people to do for themselves and, of themselves, is always a grievance and often a curse. I must be permitted, here, Mr. Chairman, to read from a late publication, this first of all political truths, so much better explained by a German, than I am capable of expressing it, that I take shame to myself, that an American must be indebted to that enslaved, yet enlightened empire, for its admirable elucidation.

"Liberty is nothing positive; it is but the absence of slavery. Liberty cannot, liberty will not establish any thing but itself; it cannot and will not destroy any thing but despotism. Liberty cannot change a people; it cannot give to a people qualities and virtues denied them by nature; it cannot change them from faults which are born with them, or occasioned by climate, education, history, or ill-fate: Liberty, is in itself nothing, yet every thing, for it is THE HEALTH OF A PEOPLE. As the healthy beggar, with his stony crust of bread, is happier than the rich man at his luxurious banquet, so is a free people, were it to dwell in the icy regions of the north, without arts, without science, without hope, without a single enjoyment of life, and, wrestling with the bear for its food, happier still than a nation without liberty, though it should have inherited a paradise in its sky, and enjoy a thousand flowers and fruits, spontaneously produced by the soil, or offered by the cultivation of the arts and sciences. Liberty alone can develope all the powers and resources of a nation, in order to make her attain the end for which she was created. Liberty alone can ripen the hidden genius of a people's virtue, as indeed it reveals all its faults, showing which of them are to be ascribed to natural causes, and which to degeneration; separating thereby its healthy qualities from those which, under a semblance of vigor conceal but weakness, or a morbid developement of a certain organ at the expense of all the rest."

So much for general principles, Mr. Chairman; and now for their practical application. The judiciary is the earthly providenee. It is, first, to secure personal liberty, secondly, to preserve property, and, thirdly, to maintain all other constitutional and natural rights. According to the 10th section of the 9th article of the constitution, to do justice, remedy and right, without sale, denial, or delay, and more especially as the 5th section of that article enjoins, to keep inviolate that first of all judicial rights, the right of trial by jury.

First—The chairman of the judiciary committee read, as he told us from Clarendon's* account of it, one of the many similar instances that might be fetched from such histories of Cromwell's contumelious treatment of a court of justice. It were to be wished, that, instead of such authority, that of a romance, as it may be called, composed in Holland, or in France, at a great distance from the scenes described, seen through the medium of the most distorting animosity, the learned judge had favoured us with even Cromwell's actions, as much more faithfully depicted in Goodwin's excellent history of that absurd but glorious English commonwealth, which begat, at the same time, the founders of the English revolution of 1688, and the American revolution of 1776. The time has come when the history of those days is better understood, and their giants less disparaged than they used to be by Clarendon, Hume, and all that class of tory fabricators of it. I shall not deny the judicial irregularities of any of the cases that have been referred to. Ship money, the seven bishops, Penn's prosecution, and the many other instances of English wrong, any more than those of the decemvirs and Virginia, for which we were carried all the way to Rome, to learn to dread responsible or popular magistrates. But I shall come at once to our own business and bosoms, in Pennsylvania, selecting a few from the innumerable instances that might be mentioned of those egregious judicial misdeeds that our vicious system has teemed with. I consider them the infirmities of the system, not of those judges who ministered under it. The system leads into temptation; it provokes indolence and insolence, cruelty and folly, and those who have been betrayed by it into the excesses, some of which I shall call to mind, are not to be deemed subjects of my personal censure, while speaking of the workings and vices of the system itself.

The gentleman from Northampton, (Mr. Porter) reminded us of Passmore's case, and delivered an eulogium on the judges arraigned for that affair. I shall not detract from the characters of the dead; but it belongs to the scope of fair argument to state that a large majority of both branches of the legislature tried in vain to remove a judge for implication, to call it by the mildest term, in a stretch of power, so shocking to the sense of the community, that the legislature, not only of this state, but of many others, and of the United States, have, by special enactment, taken from courts' and judges' authority ever to perpetuate again what, whether right or wrong, was extremely odious and shocking to the feelings of all free people. As in former instances throughout this argument, I content

*"We suffer ourselves to be delighted by the keenness of Clarendon's observation, and by the sober majesty of his style, till we forget the oppressor and the bigot in the historian"—is the elegant condemnation of *Judge* Hopkinson's authority, by a passage I never saw, till while correcting this sheet for publication.

myself with stating facts, leaving conclusions to be drawn by others, without presuming to give any opinion of my own. My friend from Luzerne, (Mr. Woodward) mentioned an act of despotic judicial impropriety committed by Judge Cooper, and the gentleman from Union, (Mr. Merrill) read, as strongly appealing to our best feelings against the dangers of a dependant judiciary, the detected letter, for which Sidney was condemned, and the remarkable case of a quaker imprisoned, for not taking off his hat. Did it not occur to that learned gentleman, that one of the charges of which Judge Cooper was accused, was committing a quaker to prison for not taking off his hat, exactly like the English instance referred to as so abhorrant to our feelings, and that Judge Chase, was impeached, and defended by Judge Hopkinson, for the prosecution of that self same Judge Cooper, for writing a paper not much more obnoxious to just punishment, than that for which Sidney suffered? It is not long since a judge in the western part of this state, struck a long list of the members of his court from its rolls, and stopped their livelihood for alleged misconduct, which the supreme court adjudged to be undeserving that severe infliction. And not many years before, in another part of the state, two respectable members of this convention were confined in prison, for a considerable period, by a like abuse of judicial authority, not imputable, I repeat, so much to the judge as to the system by which he was betrayed into it. A bishop of the episcopal church was, on another occasion, as I understand while a member of the bar, imprisoned by another judge, under somewhat similar circumstances. These, Mr. Chairman, are extracts from the catalogue of judicial mishaps, to say the least of them, in Pennsylvania, into which respectable judges have fallen, by a system that tends, inevitably, to such aberrations.

Secondly—That property has not been well secured, I vouch the judicial vindications of the gentlemen from Northampton and Beaver, (Messrs. Porter and Dickey) who have both declared that so fluctuating were the adjudications of the supreme court, as to occasion great insecurity and inconvenience: and I vouch, with still greater assurance, than even the unquestionable assertions of those gentlemen, several acts of assembly to show that it has been necessary to pass special laws for correcting judicial errors. The delays of justice were such, that my colleague from Philadelphia, (Mr. Brown) stated yesterday that he understood from one of the judges of the supreme court, that there were, at one period, eight hundred undecided causes in a single district. When the eight hundred suits in one district were mentioned by Mr. Brown, as stated to him by a judge, the delegate from Allegheny, (Mr. Denny) interposed to remove its effect, by saying that there are but eight remaining undetermined there. To be sure—we are in the midst of a revolution. We have been assured that even when the moon has come more near the earth than she was wont, prodigies have been the consequence: and when the comet of the convention shakes its fiery tail, it would be very strange if some warmth were not imparted to the earth, and perhaps some uneasiness.

I learn from the gentleman from Luzerne, (Mr. Woodward) that when Judge Mallary undertook the office, in which my friend from Northampton, (Mr. Porter) says he so much distinguished himself, there were four hundred causes at issue, and untried, in a single county of his district.

I think I may say that two, if not three years, are the average duration of the few cases tried by the supreme court in the city of Philadelphia. The chairman of the judiciery committee informs us, defensively, that there are, as he says, but four or five judges complained of, of the eighteen or twenty in the state, which, upon his own shewing, is therefore one fourth of the whole number. And I deny the doctrine of disappointed suiters, and vindictive lawyers, provoked by every judgment against them. Such is not the fact. The late Chief Justice Tilghman, who was what the Emperor Alexander called himself, in a despotic government, a happy accident in our judiciary, Judge Washington, and many other judges I could name, did not excite such implacable offence by every judgment they pronounced. What, in a word, is the principal business of the supreme court of Pennsylvania, since most unfortunately for the system, as well as for their individual good, the judges got themselves relieved from the wholesome exercise of circuits, (I do not mean bodily, but professional exercise) and settled down upon the tame functions of a court of revision—what are their *principal* labors but to *reverse* the errors of other courts? If they are so, does it not clearly argue, that either the system, or the administration of it, must be defective? The character of our printed reports, is it not inferior to that of other states; and do not the bench and the bar elsewhere declare; do not the booksellers' account sales prove that it is not equal to others? Uncertainty of law is said to be the most miserable servitude.

Thirdly—Are those constitutional duties properly performed, which the venerable chairman of the judiciary committee, assigns as the great reason why our judges should be farther removed from popular control, than those of England? What political functions has the supreme court of Pennsylvania exercised since the accession of the present chief justice? That gentleman, in an elaborate argument of self denying efficacy, has repudiated, if I am not mistaken, the right of the court to pass on constitutional, or what are called political questions, which, from some cause or other, has not, I believe, been done during his presidency in that court. If it is never to be done, if the political power is abjured, and this is high authority for it, both philosophical and practical, then there is an end to the great reason most anxiously urged, for what some consider the independence, and others the irresponsibility of the judiciary.

Be that as it may, there is another, and as I hold, the most pernicious irregularity resulting from our bad system, to which I next and earnestly beseech the committee's attention. I mean the absorption, by the higher judiciary, of all the salutary faculties of the lower in the judicial arrogation, now, become almost universal to determine the facts, as well as the law of almost every case, and to make the verdict what I acknowledge the judgment, but only the judgment ought to be, the creature of the court. Sir, I protest against this much to be deplored and now full grown usurpation, a rank abuse, which ought to be extirpated. I hope we shall be able to engraft some guard for the restoration and inviolability of jury trial into the new constitution. With much defference, but as decidedly as possible, do I differ from the learned gentleman from Northampton, (Mr. Porter) if, as I understood him, he deems the jury less important than the judge, in the administration of justice. I hold the very contrary. The jury is the palladium of personal liberty, drawn into litigation and

for the most part as important in questions of property. A jury is much less liable to err than a court, and for obvious reasons. That they are so, is indubitably proved by the fact, that, for one verdict set aside, or even complained of, there are, I suppose, ten judgments. The gentleman from Union, (Mr. Merrill) informed us, that the imprisonment of a jury in England, by order of a court, was one of the proximate causes of the revolution of 1688, and every one knows with what sturdy decision an English juror, with what respectful consideration an English judge regards the mystic right of the twelve empannelled laymen, to resolve all intricacies of fact, all the contrivances of fraud, all the shades of character, and all the properties of guilt or innocence. This great popular right, so momentous even in its political consequences, as preserving popular reverence for the judiciary, which should never be impaired by the slightest circumstance, is every day trampled under foot, by short sighted judges, who feel power and forget right. The ungenerous contrast displayed throughout Pennsylvania, of implicit reverence by jurors for whatever judges may declare to be the law, and the habitual encroachments of judges throughout the province of facts, is one of the most striking proofs of the imperfections of our system. Into this usurpation, as well as those before mentioned, it is the system that betrays the judge, and nothing, I fear, will restore the right trial by jury, but greater responsibility of the judiciary to that community from which jurors are taken. Another effect of this assumption, by judges of the trial of the facts, as well as the law, has been such procrastination of our trials, that six weeks for one trial is not a very uncommon abuse, during all which protracted period, jurors are exposed to all those out of court, malign influences, which have been mentioned as dangerous to judges, and against which they ought sedulously to protect juries, by despatching the law, and leave the facts uncontrolled to those so much better constituted, and able and disposed to do them justice.

From this review of the political functions of the judge, the transition is natural to his partisan politics. The venerable chairman who strenuously advocates the present constitution, confesses that a partisan judge is not to be defended. And is there any question at all, that most of our inferior judges are partisans, and many of the superior judges, candidates or aspirants for political honors? Without dwelling upon the notorious delinquency of the former class, I may be permitted to mention, I trust, without giving offence, that the first chief justice of this commonwealth, became its second governor, after a most violent shock of parties, that one of the judges of the supreme court of the United States, was a candidate for the chief magistracy of a neighboring state, and another of the judges of that court, what lawyers might call *cypre's*, being a candidate for the chief magistracy of the Union.

Nay, sir, I hope I trespass upon no propriety by adding, that we have seen in the newspapers, the venerable chairman of the committee, (Mr. Hopkinson) himself, nominated for that high station, not indeed, in consequence of his interference in party politics, but his spontaneous appearance before the public, to discuss one of the great topics of public diversity of opinion. It is in vain for him to tell us that the judicial tree is sound, with only some rotten branches, that will fall off in time, if left to themselves. It is rotten at the root. Judicial life offices, as they are

properly designated, are at once the richest and most plentiful rewards for partisan services. They are scattered with the utmost profusion by every governor. *Life offices* they are called, by the community, and should be. The words indeed, are not in the constitution of the state, any more than the word *slave*, in that of the United States. But the thing is there, in all its bad consequences, as much in the one as the other. A gentle circumlocution may cover up what stains the American character abroad, and jeopards the union among ourselves: but no coloring of phrase, can alter the too true reality. In saying this, I venture no opinion, much less condemnation of the circumstances alluded to; but stopping short at the statement of facts, I leave inferences to the judgment of others. The fact is, the solemn and the unhappy truth, that we have constitutionally both life offices and slaves, and it is beyond the power of professional or interested argument, to convince people that it is not right to call such things by their right names. One governor rewarded with inferior magistracies, the two leading editors of rival party newspapers. Another governor, the antagonist of the former, conferred a president judgeship for partisan services, on an individual who fell into deplorably bad habits, and yet it was impossible to remove him. The names of judges struck with mental incapacity, extreme bodily infirmity, or displaying by vice and immorality, the grossest unfitness for judicial functions, but whom it was impossible to get rid of, till death relieved them, and the commonwealth together, must occur to every gentleman's recollection. Meddling in politics! I have heard of judges who did nothing else, and held their commissions for no other purpose than to receive their salary, and regulate the business of their party. I have indeed heard of a court that is said to have been created for no other purpose, and to exercise scarce any other faculty than by a judicious distribution of tavern licenses, prosecutions of political opponents, and other such operations, keep a county in order, and a party in power. In truth, these life offices, high and low, of the judiciary as arranged by the present constitution, have been the great pension fund on which governors have drawn for their rewards to partisans, and other unworthy favorites. By the report of the secretary of the commonwealth, it appears that these commissions were lavished during the last days of a late governor, and that his successor justified equal profusion, in order to do away some of the bad effects of its extravagance by his predecessor.

For, after all, we have Judge Hopkinson's authority, for the sad reality that judges are like other men, from which, and all experience, I must infer, that even the best of them cannot resist, or escape party influences. When, during the war of 1812, the great militia question arose between the federal government and that of Massachusetts, the supreme court of that state, with an eminent and irreproachable lawyer at its head, the late Chief Justice Parsons, did not hesitate to deny Mr. Madison's understanding of the federal constitution. Judges Kent and Spencer, of New York, in the council of revision, were equally strenuous, in opposition to the conduct of that then, much condemned, but since, much applauded war, and, like the imprisoned jurors, who brought about the English revolution, those judges were mainly instrumental in causing that change in the constitution of New York, which introduced, perhaps, their inferiors to the bench, though that circumstance, is redeemed, by abundant meliorations in the new constitution.

From this consideration, of the infirmities of our judicial tenure, I proceed to a very cursory review of some of its alleged advantages. Defend us, said my friend from Northampton, (Mr. Porter) from the curse of an unlearned judiciary. Take a look, said the chairman of the judiciary committee, at the law library, in this capitol, and reflect, from its size, how much time and labor it must take, to qualify a judge. Yet, Buller, perhaps the best English judge of his day, Chancellor Kent, and Judge Story, all became judges, at an age too early, and in circumstances too slender, to admit of their having studied, much less owned, extensive libraries of books. The present chief justice of Pennsylvania, was also placed upon the bench, at a very early period of life, and it is hardly possible, that either his leisure, or his salary since, have enabled him to read or to buy a great number of books. I hope I am not an enemy to learning, but I shall venture to say, on this occasion, that probably one third of the books in a law library, are technical treatises, concerning those abstruse sciences, which the good sense of mankind, and the labors of legislation have been, for many centuries, struggling to overcome the habitual attachment of lawyers to; while another third of the same library is composed of modern English works, which a law of this state (unwisely, as I conceive, repealed of late,) for a long time interdicted the use of in our courts of justice. Let me fortify myself in this perilous assertion, by vouching a very able tract, lately published by Judge Baldwin, in which he complains, with no less regret than reason, of the extreme injury done to the constitution of the United States, by the construction of judges, relying on recent English law books for their learning. Within a very short period, the supreme court of Pennsylvania have solemnly recognized the obligation as well as the wisdom of those short pleadings which Penn prescribed, at the foundation of this state; and there is some reason to hope, that the technicalities, fictions, and complicated processes, which constitute so much of what is said to be the necessary learning of the law, are falling into disrepute, both here and in England. The chief justice of Pennsylvania, who preceded Mr. Chew, not long before the revolution, was a Mr. Allen, a merchant of Philadelphia, and I have heard the now senior surviving member of the bar of Pennsylvania, a gentleman of great learning, whose reputation is not confined to this country, and will be historical, say that the commercial law of this state was never better administered, than by Chief Justice Allen.

The much decried arbitration system of Pennsylvania, with a superintending judiciary to regulate it, has been, in my humble opinion, of much benefit to the community. Liberty, property and character, are all safe under the justice administered by arbitrators, and the objection—I appeal to lawyers for the fact, that is mostly made to an arbitrator, is, that he is not fresh from the ranks of the people. An arbitrator long or much employed as such, what is called *a patent* arbitrator, is mostly objectionable. He has learned the tricks of the trade, and not only suiters, but lawyers, prefer a man who has not had too much experience.

All the objections that were so eloquently urged by the venerable chairman of the judiciary committee to short or responsible tenure of judicial authority, apply with much greater force to the arbitrator, juror and justice of the peace, than to the members of the higher judiciary. If the press,

the people, corruption, intimidation, or any other extraneous malign influences are to be apprehended, they are at least as formidable to the lower or popular branches of the administration of justice as to the higher. Nor must it ever be lost sight of, that nine-tenths of the litigation and controversy of the community are adjusted in these lower forums. The federal court for this district, in which Judges Baldwin and Hopkinson preside, determines but very few controversies in the course of a year; and the same thing may be said of all the superior courts compared with the vast mass of suits disposed of by inferior magistrates.

It may not be amiss to mention that whenever commissioners have been appointed, as has often been the case in this state and others, of late years, to digest and methodise the laws, annual as such appointments I believe have always been, whether made directly by the legislature or by nomination of the governor, short tenure and moderate salary have not prevented the selection and acceptance of respectable professional talents, and the re-appointment of the same individuals from year to year. If I mistake not, barristers of a certain standing are every year commissioned in England to try causes, both civil and criminal, whose judicial tenure is only *pro hac vice*, and their compensation, probably, altogether arbitrary. The highest judicial officers in England—chancellor and master of the rolls—these appointments are not only temporary, but entirely dependent on the mere changes of party. There are now no less than four chancellors in England, Eldon, Lyndhurst, Brougham, and whatever the present chancellor is entitled. Something was said by my colleague from the county, (Mr. Brown) of the district courts; that prolonging the period of their duration had procured better incumbents. I deny it. As far as I have any knowledge of the gentlemen in those stations, they would not, I presume, and certainly they could not, deny that when the tenure was three years, the places were filled by men of more professional eminence than when it is ten. Three years office obtained the best talents. The last instance I shall refer to in this course of argument, is that of the learned and venerable Judge (Mr. Hopkinson) himself, who, I hope, will excuse my assertion, that he never was a better, bolder or more independent judge than during the considerable period that elapsed between his nomination and confirmation; when his tenure was by sufferance of an antagonist party, just come into power, with no very great forbearance towards political opponents. By all this I do not wish to be understood as denying the value of time for either judicial independence or qualification. All I mean to say is, that I deem its importance greatly overrated, in the estimate of those who contend for what I consider an irresponsible tenure.

Nor in this connexion, let me be supposed to undervalue the absolute necessity of adequate salaries for the judges. Esteeming a good system, including sufficient compensation, as much more likely to insure the state a respectable judiciary, than any duration of office, I have submitted a plan which at the proper time, I will endeavor to have passed upon. By that plan, though the gentleman from Beaver, (Mr. Dickey) once intimated that the salaries would be out of reason, yet the fact is that it proposes a very moderate increase of the present allowance, not more than three hundred dollars to that of the chief justice, and in the same propor-

tion throughout, which cannot be considered extravagant, adverting to the facts that the present salaries were fixed sixty years ago, since when the price of every thing has increased far beyond the proposed increase of judicial allowance.

After all, Mr. Chairman, I do not regard either salary or tenure as the most efficacious means of getting good judges. A good judge is a public blessing, and a bad judge, a common calamity. He will never be a good one, who works for the salary, or hides behind the tenure of office. The venerable chairman of the judiciary committee, portrayed judges in darker colours than I should use. But he knows best. Avarice, ambition, interested motives, love of ease, and of pleasure, he says, are among their frailties, like other men. That in framing organic government, we are to deal with them as men like others, I grant. Still, I respectfully insist that *we* should treat them as Americans—citizens of a republic, where the people are the sovereignty, and self-government ought to be recognized as much as possible in every thing. If so, a good judge will never want its responsible protection, and a bad one should never enjoy it. Our whole system must be out of joint, unless we constantly recognize the principle, as a principle, that no branch of government is supreme, but that the mass of the community govern. No body denies this in theory. But let us carry it out in practice ; and to the uttermost development that experience warrants. We owe a debt of irredeemable gratitude to our English lineage, for the birth-right of descent from the nation of Shakspeare and Newton, Milton and Locke : but much greater is the gratitude due for Milton's republican politics, than his inimitable poetry. And it is impossible, either to deny, or to forget, that the broad foundations of that English law of liberty, which is our richest heritage, were laid by judges, under arbitrary tenures, and small salaries. All the titles to our liberties and our lands, to our reputations, and the many advantages we justly boast above other people, were established by Coke, and Hale, and their peers of those times, when the judicial tenure was at will, and the salary a pittance ; when Coke was thrust from office without offence, and Hale was swearing allegiance one day to a Stuart, the next to the commonwealth. We are indebted for our American justice, to the arbitrary sway of Plantagenet government. To come down, even to much later times, those of Holt, Mansfield, Wilmot, Blackstone, and their associates, even they were always subject to parliamentary control, and never recompensed by large salaries. It is not till we reach the Eldons, and their cotemporarias of later days, that the judicial office enriched its incumbents by great emoluments. I say again, that I am no advocate for stinted compensation, but I feel bound to contradict the position of the chairman of the judiciary, in this particular, as in so many others. The judge, whose best protection is his tenure, and who works for pay, will never be an eminent, or a popular magistrate. I think I could mention one, if not more than one member of the bar, who would be happy to fulfil the great duties of the chief justiceship of Pennsylvania, without any salary at all, to whom the generous ambition of useful power, and the still nobler longing for posthumous fame, would be motives enough for undertaking that office, without salary ; who, like Washington, in the revolution, for the reimbursement of mere expenses, would gladly bear all its labors and responsibilities, and satisfactorily discharge all its great duties. Among the fond fancies I have indulged, in connexion with this convention, one has been to anticipate, that a gentle-

man I could name, whose not having been appointed chief justice of Pennsylvania, I shall always esteem a principal cause of this convocation, should, under the new constitution, be called from his private station, to restore the landmarks of our jurisprudence, and the character of our judiciary; in which aspiration I have no motive, that I can charge myself with, but that of a sincere and anxious desire for the supremacy of the law, and the stability of its administration.

Finally, after all that has been said, it is in vain to deny, that the justices of the peace are not only part and parcel of the system, but its very foundations. By the report of the secretary of the commonwealth to a resolution I submitted, it is estimated, that the very costs of their administration amount to the large sum of one hundred and sixty-seven thousand three hundred dollars per annum. This estimate is certainly below the truth, and we may safely take one hundred and seventy thousand dollars, as at least the annual cost of this inferior administration of justice. Pains have been taken to prove, that the militia cost the state twenty thousand dollars per annum, as reason enough for abolishing the whole system. Yet here is a judicial system, one branch of which, costs the people eight times as much. It is vain to controvert, therefore, the importance of justices of the peace, in the administration of justice. They are, indeed, but the foundation stones of the edifice, near to, and almost under the ground, of coarse and unsightly materials. But the superstructure rests altogether on this broad basis, and whatever a profession may say, the people must feel, that as regards tenure, character, integrity, freedom from improper influence, and all the other attributes of the judicial office, they are of primary importance. Therefore, it is, that I have constantly voted against separating and degrading the squirearchy from the rest of the judicial hierarchy. There may be more bad fruit on the lower branches than the upper, but the stem is the same, and it is impossible to cut off the one without striking at the other, and lopping away the principle of its stability.

Our friend from Northampton, (Mr. Porter) if I understood him, inclines to undervalue that humble, but excellent portion of justice, which, in many of the states, particularly in New Jersey and Virginia, is administered by what is called justices' courts. I have no practical acquaintance with them, but I have always been led to believe, that they are excellent institutions. A late president of the United States, who was almost unanimously re-elected to that office, Mr. Monroe, an honest man and true patriot, sat, after his presidency, in such a court, in the county of his retirement in Virginia. And, if I am not mistaken, the late judge Griffiths, of New Jersey, has bequeathed to us his testimony to the usefulness of such courts in that state. I think, among the first state papers of Pennsylvania, may be found an early and very able veto of Governor M'Kean, against the act of assembly establishing that district system, which, under the pretext of bringing justice home to every man's door, has created courts rather for the accommodation of the bar than the people. I believe that the best system consists in a very limited jurisdiction, for small controversies, and a supreme court adequate to the adjudication of all the rest. Such is the English system, and as I submit the best. A middle judiciary is as inconsistent with our institutions, as a middle class in society. It is like that modern arictocracy of lawyers and clients, well

designated as the shopocracy, from which the public derives no advantages, but a few are alone benefitted by. I have therefore proposed, though I hardly flatter myself it will be adopted, a system with a broad basis of neighborhood, or domestic jurisdiction, superintended by a higher judiciary, continually visiting every part of the state, and maintaining a constant superiority and uniformity of administration.

Of the Jersey judiciary, and the effects of the Quaker controversy, upon which Judge Hopkinson founded much of his argument, I can add little to the explanation of the gentleman from Luzerne, (Mr. Woodward.) It was a sporadic case, not likely to occur often, and we are not bound by an abuse which can hardly be considered as part of any system. I know nothing of the judge of whose destitution, under that excitement, Judge Hopkinson so pathetically complains. It is no obligation of government to provide alms for individuals suffering under its operations. Here is the broad difference between the English system and ours, both state and federal. They pension cast off judges. We do not, and probably never will. This may be a fit occasion to mention what I never did while he lived, that Mr. Madison, shortly before his death, told me he could see no objection to pensioning a faithful superannuated judge, any more than a disabled sailor or soldier. And I have also heard the late William Lowndes, declare, that the American system of individuated pensions, granted by specific law, is totally different from that abuse of European government, by which the monarch is allowed to pay any services he wants, with public money. We are already discovering in this country, however, that industry, and that constant study of continual advancement which characterise our people, is a sufficient substitute for public bounty—and a better. The gentleman from Northampton, (Mr. Porter) says, that Judge Mallary's income at the bar, though I believe not yet two years in that vocation, is much larger than his salary on the bench was. And it has always been understood, that Chancellor Kent's receipts, since he left the bench, have much exceeded what they were, while he was on it. It may no doubt, be taken for granted, that any judge, who does not give himself up to indolence, politics, or other bad habits, but is constantly studying to improve, as he may do, will be no loser by removal from office. Removal would not impoverish Charles Ewing, or Joseph Story. Whatever the individual effect, I have no doubt that the common weal would be benefited by occasional replenishment, and rotation in the judicial office. The truth is as old and as profund as Tacitus, that men grow arrogant even on annual appointments: *superbire homines etiam annua designatione.*

I have thus, Mr. Chairman, at much expense of your patience, presented this subject in some of its prominent features, attempting to shew, that our constitutional tenure of judicial irresponsibility, is a departure from all precedent, and the wisdom of other nations; and that it has failed to afford us the administration of justice expected from it. I think, we must try some other plan, instead of that experiment, perhaps go back to the English, and our own colonial tenure. I prefer the amendment of the minority, to the present constitution, and consider ten years a much more reasonable tenure of office than fifteen. But my desideratum, is a *responsible* judiciary, by whatever tenure, even that proposed by the colonial act of 1759. The convention will not forget, that the

amendatory principle unanimously reported, is, in all likelihood, to be incorporated with the new constitution; so that there will be no great danger from trying a limited or responsible tenure, since it always will be in the power of the people and their representatives to amend it, and adopt whatever plan they may think proper.

Lastly—a few words concerning the supposed analogy of the federal judiciary. Their tenure of office was established, under the impression, that the American, is an improvement on the English plan. That it is not, has been the effort of my whole argument. The federal judiciary is essentially different, however, from this state, both in jurisdiction and responsibility. Its jurisdiction extends over states, ambassadors, and, as Mr. Madison, and his disciples believe, other objects of high political cognizance; and its responsibility is to states, rather that to the people. Thus the distinctions are marked between the state, and the federal judiciary. Granting, however, that there is greater similarity than I acknowledge, has not the federal judiciary also proved a failure? I refer again to Judge Baldwin's tract, to show that the political functions of that court, have brought it into great difficulties. There is no legislative, executive, or even popular contrariety of opinion, exceeding that of the judges of the supreme court of the United States; party differences or fluctuations have never gone farther than on that bench; so that, if the remote responsibility be connected with the exercise of a stable political power, that it is to meliate on great national occasions, the federal tenure has not answered a good purpose in this respect, any more than that of the state. If political jurisdiction is the plea for prolonged and irresponsible tenure, as we are told by the argument of the learned chairman of the judiciary committee, if, as I heard him say with some surprise, judicial power to *control* the legislature and executive, be our scheme of government, it has signally, lamentably failed in the Union; for the judges, differing in opinion, have not been able to control their own judgments, which are, Judge Baldwin says, and says truly, in a state of deplorable contradiction and confusion. He says that he was, at one time, in a minority of one, in a case in which he now is in a majority of several. If, as is contended by many, the federal judiciary is the *sole* arbiter of political controversy, I venture to allege that it has proved a total failure for that function. Setting its tenure up to support ours, therefore, is worse than of no avail. It affords no argument, and in fact, much more of warning than encouragement. Moreover the annual appropriation for salaries, places all the judges within the power of congress. It was this dilemma of the federal judiciary, which Jefferson deprecates, in the passage from one of his letters I have read. And, whatever we may think of our other patriarchs, he has proved himself the truest prophet, as he was the greatest apostle, of the workings of free government.

There was one argument fell from the gentleman who introduced this subject, which I confess is very impressive with me, for I had never thought of it before, and thus far, I am at a loss how to answer it; that is, that a limited judicial tenure, frequently expiring and renewable, according to the plan of the minority of the committee, or any similar plan, must tend to enlarge and aggravate that executive patronage which almost all of us seem to be agreed and anxious to reduce. Such a consideration makes me halt and hesitate between the colonial act of 1759, viz: tenure

during good behaviour always and strictly accountable to a mere majority of the legislature, and the scheme of occasional expiration of office, adopted in most of the new states, and now proposed certainly with much force of reason and public inclination for Pennsylvania. To use a word which Mr. Madison applied to his predicament in the convention of Virginia, I am not so *stiffly* wedded to either project as to stand by it under all circumstances. It is the principle of complete responsibility, that I stand up for, so that the judiciary shall not be what is claimed for them, lords, paramount of the government, and beyond the reach of the people.

Mr. Chairman—a few words in conclusion, of appeal to our own responsibility. I know nothing of tactics. I have no confidence in them. Personal or other combinations in this convention may send its proceedings forth very different from the sense of a fairly united majority. Who the majority are, who knows? Not I, for one; and personally I care as little as I know. Minority is a safe shelter under which I can cheerfully abide. But a fearful responsibility to the people, to posterity and to conscience must go abroad with whatever majority arranges this most vital function of the body politic.

I think, perhaps I flatter myself, that I have shown, that under the present constitution, and led into temptation by its too great security, judges are apt to become supine, vicious, tyrannical, and altogether bad ministers of the law. Do you believe, sir, that any people, any body of men whatever, in this state, could be found, who would imprison a Quaker for not taking off his hat, or that even a mob, for any offence a couple of gentlemen might give them, would hurry them into jail for a fortnight, without bail, or relief of any sort? Certainly not. No mass of men could be so unmanly, so inhuman: nor could any individual, whether judge of not, not betrayed by his own passions, original sin, but by being the minister of an unnatural system. In again alluding to these revolting instances, let me not be misunderstood as even blaming the very distinguished man of science, who was the perpetrator of the one, or the mild and amiable gentleman, also still living, who committed the other. I blame the system, not the men.

If there are members of this convention who fear to trust the people, and carry out in practice the theory of free government, who think that in this country it is still unsafe, with all our encouraging experience, to confide even as much as they do in England, and as was done by our colonial ancestors, let such gentlemen put the curb at once upon self-government. Now is the time, this is the occasion to ask the people to submit to it, to act upon the principle imputed (unjustly imputed, as he says,) to a celebrated letter of a distinguished citizen of this state, now serving his country abroad, and torturing his illustrations into arguments, make at once what is called a strong government. Possibly the people may be satisfied that they are, what they have been called, their own worst enemies, and stultify themselves at the ballot boxes. If not, now is the time, and this is the occasion for trusting free Americans, at least as far as colonists were, and Englishmen are confided in. Our judicial system has failed, almost by general confession. Judgment against much of it has gone by default; and, for one, I am thoroughly convinced that we shall neither satisfy the spirit of the age, the will of the people, or the

honor, I hope we all covet of public benefaction, unless we give judgment against the rest, and order a new trial of the whole.

No one, who has done me the honor to attend to my argument, can be so sensible as I am of its infimities, its inadequacy to the subject. All I claim is the merit of sincere and well considered conviction, that the constitution is wrong, and may be easily amended, by rendering the judicial office not less independent, but much more responsible, by which, I think, the same men who fill it will be rendered better judges, and their successors better still. How this improvement is to be brought about, I am not very solicitous. I shall, therefore, move to amend the proposition as now before the committee, by striking out all after the word "*him*" in the fourth line, and inserting what will make the whole paragraph read thus; but without committing myself to any particular preference, but in order to try the sense of this body upon the principle which I cannot abandon, however it may be modified, viz:

"The judges of the supreme court, of the several courts of common pleas, and of such other courts of record, as are or shall be established by law, shall be nominated by the governor, and by and with the consent of the senate, appointed and commissioned by him. They shall hold their offices during good behaviour, but the governor may remove any judge, upon the address of the representatives of the people, by vote of the general assembly."

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TO

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ERRATA.

In page 388, line 10 from top, for "*report of the committee.*" read "*amendment of Mr. Woodward.*"

In page 537, line 26 from top, for "*offered by the gentleman from Beaver*, (Mr. Dickey)"—read "*as amended.*"

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