CONGRESS.

A DULL DAY IN BOTH HOUSES.

The Legislative Appropriation Bill in the Senate and the Naval Appropriation Bill in the House—Wretched Condition of Our Navy—New Post Office and Custom House Building for Albany, N. Y.—Senator Fenton's Customs Reform.

SENATE.

WASHINGTON, Feb. 13, 1872.

THE HOUSE POSTAL BILL

was made the special order for Friday.

THE CHICAGO FIRE AND THE SOLDIERS.

The bill to reimburse soldiers for the loss of clothing in the Chicago fire was passed.

REMOVAL OF GOODS IN BOND.

Mr. SHERMAN, (rep.) of Ohio, called up the bill modifying the law so as to permit the removal of goods in bond from the original packages in cases of accident or legal interference, which was passed.

DECLINE OF AMERICAN COMMERCE.

Mr. CONKLING, (rep.) of N. Y., presented the memorial of the New York Chamber of Commerce on the decline of American commerce, and said it was so valuable and important a document it ought to be printed. Referred to the Committee on Commerce and ordered to be printed.

IMPROVEMENT OF NEWPORT HARBOR—COMMODORE WILKES' EXPLORING EXPEDITION.

Mr. ANTHONY, (rep.) of R. I., presented a petition signed by the Governor and Lieutenant Governor of Rhode Island, the Mayor of Providence and others for an appropriation for the improvement of the harbor of Newport; also a memorial from Commodore Wilkes for the publication of the record of his exploring expedition in 1843 or the return of his report, that he may publish it himself.

RETIREMENT OF UNITED STATES COURT JUDGES.

Mr. TRUMBULL, (rep.) of Ill., called for the bill to authorize the President to retire Judges of the United States Court on full salary whenever he is satisfied they are permanently disabled for the performance of their duties.

Mr. BAYARD, (dem.) of Del., inquired whether the bill required that a judge must have served a certain time in order to get the benefit of it?

Mr. CARPENTER, (rep.) of Wis., said there was no special length of service provided for in the bill.

Mr. BAYARD said he could not vote for the bill unless it required a certain length of previous service. The bill as it stood would permit the appointment of a man to a judgeship to-day and his retirement a month hence on account of physical or mental disability, resulting, not from public service, but from exertions made for his own benefit before his appointment. He approved of the retirement on full pay of judges who had rendered long public service, but not the establishment of a pension list as proposed by the bill.

Mr. MORRILL, (rep.) of Vt., said the Senator (Mr. Bayard) professed to approve the retirement of a judge on full pay after ten years of service, and asked what he thought would be just in the case of a judge who, after seven or eight years of service, was struck with paralysis and so disabled as to require to be helped up the Capitol steps when going to perform his duties?

Mr. BAYARD said that the most wholesome general rules and laws sometimes inflicted hardships in individual cases.

Mr. CARPENTER said this bill was not designed for the benefit of any particular judge, but simply for the good of the public service. A judge holding office during good behaviour could not be removed for disability; and if he retained his position when disabled the public interests would, of course, suffer.

At the expiration of the morning hour the bill went over, and then came up Mr. Fenton's bill for

CUSTOMS REFORM.

Mr. COLE, (rep.) of Cal., moved to postpone it and take up the Legislative Appropriation bill.

Mr. TRUMBULL saw no necessity for setting aside other important bills to take up an appropriation bill, which would not go into effect until the end of June.

Mr. ROBERTSON, (rep.) of S. C., hoped that if the pending bill should be postponed the last Amnesty bill passed by the House would be taken up.

Mr. FENTON, (rep.), of N. Y., said he deemed his bill for customs reform one of the most important measures before Congress; but as his colleague and other members of the Finance Committee seemed to desire the postponement for a few days he was willing to have it laid aside and the Legislative Appropriation bill taken up.

Mr. CONKLING, (rep.) of N. Y.—I have not expressed any desire for its postponement.

Mr. FENTON—I allude not to any public expression, but to some private conversation.

Mr. CONKLING—Neither in public nor in private have I expressed any such desire.

Mr. TRUMBULL said he would object to any arrangement to take up the Appropriation bill. He thought that the very important bill for customs reform ought to be proceeded with, but if it was to be laid aside he would support the motion of Mr. Robertson to take up the last Amnesty bill; and he hoped the friends of amnesty would stand together and vote down all attempts to kill this bill, like the former one, by putting on irrelevant riders.

Mr. SUMNER gave notice that if the Amnesty bill was taken up he would press his Supplementary Civil Rights bill as an amendment.

Mr. EDMUNDS, (rep.) of Vt., and Mr. MORRILL, of Vt., favored the immediate consideration of the Legislative Appropriation bill.

Mr. Fenton's bill was then postponed, and the Appropriation bill was taken up by a vote of 31 yeas to 18 nays.

Mr. COLE, having the bill in charge, explained the amendments reported by the committee, after which the Senate proceeded to consider the bill in detail. Among the amendments reported is one to discontinue the publication of the laws in the newspapers.

Mr. ANTHONY said he had for years favored this reform.

Messrs. POMEROY, (rep.) of Kansas, and HARLAN, (rep.) of Iowa, opposed the amendment. No action was taken upon it.

Mr. RAMSEY, (rep.) of Minn., gave notice of an amendment to increase the salary of the Supervising Architect of the Treasury to $5,000 a year.

THE UNITED STATES' CASE AT THE GENEVA CONFERENCE—OUR RELATIONS WITH SPAIN.

The VICE PRESIDENT laid before the Senate two messages from the President transmitting a copy of the case of the United States presented at Geneva, and the other reports of the Secretary of State and the Secretary of War in reference to questions with Spain arising out of Cuban affairs, and the orders given to our vessels in Cuban waters.

At ten minutes past four P. M. the Senate adjourned.

HOUSE OF REPRESENTATIVES.

WASHINGTON, Feb. 13, 1872.

THE COINAGE LAWS.

Mr. HOOPER, (rep.) of Mass., from the Committee on Coinage, Weights and Measures, reported a bill revising and amending the laws relative to the mints, assay offices and coinage of the United States.

Mr. MCNEELY, (dem.) of Ill., a member of the same committee, raised the point that the report had not been authorized by the committee.

The question raised a good deal of confusion and embarrassment, until, in answer to a direct interrogatory by the Speaker, Mr. Hooper stated distinctly that he had been authorized and instructed by the committee to report the bill. Finally the objection was withdrawn and the report was received, and the bill was made the special order for the second Tuesday of March.

PROPOSED NEW POST OFFICE AND CUSTOM HOUSE FOR ALBANY, N. Y.

Mr. HALSEY, (rep.) of N.J., from the Committee on Public Buildings and Grounds, reported a bill for the erection in the city of Albany, N. Y., on a suitable site to be donated by the city authorities, of a suitable building for a Post Office, Custom House, United States Courts and Internal Revenue office, and appropriating $350,000 for the cost thereof.

Mr. GARFIELD, (rep.) of Ohio, opposed the bill, quoting from the annual report of the Secretary of the Treasury, in which he stated that he could not advise further appropriations for public buildings until some of those now in process of construction were completed, inasmuch as the Supervising Architect of the Treasury and the force under him had now as much work on hand as they could attend to; also that the points at which public buildings were most needed were Hartford, Indianapolis, Cincinnati and St. Louis.

Mr. FARNSWORTH, (rep.) of Ill., ridiculed the idea of a necessary public work not being undertaken because of the business engagements of the Supervising Architect of the Treasury, who had so much to do at Washington in the office to which the President had appointed him as a member of the city Board of Public Works. The proper person to whom the erection of a public building should be entrusted was a reputable architect residing in the locality.

The bill was advocated by Messrs. Shellabarger, Tyner and Potter, and it was stated in the course of the discussion that the bill was a test question, to be applied to other places where public buildings were asked for, and the aggregate of which, according to Mr. Garfield, would amount to about twenty million dollars.

Mr. GARFIELD made another appeal to the House not to pass the bill, because after it there would come in bills for Cincinnati, Columbus, Newark, San Francisco and other cities. The public works of the United States had last year $15,413,903 appropriated for them; and after the Secretary of the Treasury had cut down the estimates for the coming year as low as he thought they ought to be cut down, the total was still swelled to $18,468,000, not including Chicago or St. Louis. The cost of public buildings was already twenty-two per cent of all the civil expenses of the government.

Mr. CONGER (rep.) of Mich., replied to Mr. Garfield, and argued in support of the pending bill and like bills for Port Huron, Mich., and other cities.

Mr. GARFIELD called for the yeas and nays, but they were refused, and the bill passed without a division.

TEA AND COFFEE DUTIES.

Mr. DAWES, (rep.) of Mass., Chairman of the Committee of Ways and Means, reported a bill to repeal the import duties on tea and coffee, in obedience to the order of the House yesterday, and he asked leave to make a statement and to request the House to have the bill recommitted.

Mr. MERCUR, (rep.) of Pa., objected to Mr. Dawes making any statement, and the Speaker ruled that, although Mr. Dawes had a right to report his bills, the bill must immediately go to the Committee of the Whole, and debate could not go on in the House except by unanimous consent.

Mr. DAWES thereupon declined to report the bill, and he was not permitted to make a preliminary statement, and the House, at two o'clock, went into Committee of the Whole on the state of the Union, Mr. Blair, of Michigan, in the chair, and took up

THE NAVAL APPROPRIATION BILL,

on which general debate was limited to two hours and a half.

Mr. HALE, (rep.) of Me., who reported the bill, opened the discussion. The reduction of government expenditures, he said, was demanded by the people and by a majority of the House, but such reduction was of little account if it were merely spasmodic. It must be regular from year to year, go the amount required. The amount by this bill was $17,943,347, that appropriation for the current fiscal year was $19,758,717, being a saving of about $1,800,000 in favor of the fiscal year ending June 30, 1873. It was believed that the sum contained in the bill would cover all the expenses of the Navy Department, and that no Deficiency bill would be asked for. The cost of the navy for the seven years preceding the war was as follows:—

1856	$14,518,000	1859	$15,347,000
1856	15,971,000	1860	14,077,000
1857	14,480,000	1861	14,856,000
1858	15,629,000		

So that the average annual expenditure for those years of peace, and of cheapness, and of democratic administration, was about fifteen millions of dollars. He invited comparison between that rate of expenditure and the present rate.

Mr. CONNOR, (dem.) of Texas, referred to the fact that the navy had been gradually decreasing, until now we had but twenty-nine vessels in commission, mounting 389 guns, and he asked Mr. Hale to harmonize his statement with that fact.

Mr. HALE said the gentleman from Texas was altogether too impatient. He would refer to that point when he came to it. He mentioned the fact that the number of men to which the navy was limited was 8,500, while the British navy had 64,000 men; and if the nation should get into war it would be impossible to send out three additional vessels, all fully armed, with the present force to which the navy was limited. He admitted that there had been appropriated $500,000,000 for the navy during the four years of war, and that the people had a right to know what had become of that money and of the ships which should have been built. He was sorry to say that the investigation showed badly for the use of the money as affecting the future. He did not wonder that people would be sceptical as to the assertion that we had no navy or that members would hesitate twice before they would appropriate more money for more naval expenditures. The whole point of his argument was that the blame should fall where it properly rested. If there was no navy as a legacy from the past, and if the country had not now a respectable name established they should not grumble at any expense that was inevitable. The navy now possessed, of the 670 vessels that belonged to it during the war, only 179 vessels of all classes. Of the rest some had decayed or sunk or been sold; of scores and fifties of others he did not know the fate; he had not been able to follow them; they were not on the hands of the department, and the department was not responsible for them. They had vanished and faded away and were not to be found or traced. The navy now contained 179 vessels in all. These he classified into four classes, not of strength, but of utility. Class No. 1 consisted of vessels that were at sea, some sailing vessels, some steamers and some iron-clads; they numbered 36. Class No. 2 consisted of vessels suitable to relieve those that were at sea; they numbered 15. Class No. 3 consisted of vessels that were worth being repaired in case of an emergency. If this country should have war with Spain, or if the little cloud in the sky which had, in the minds of some, meant war should grow and trouble should come out of it, the vessels of this last class could be fitted out and sent to sea cheaper than new vessels could be built. This was not a very promising class, but still it was worth something. It numbered twenty-four vessels, including six on the stocks. Below that class—below any class that could ever be used in peace or in war—was a class of forty-six vessels, utterly worthless and unfit for repair—good for nothing but to be sold for old material. The remainder of the vessels not comprised in those classes was made up of storeships and transports, in all fifty odd vessels. In conclusion he defended the present administration of the Navy Department, and submitted that provision should be made for building new vessels for the navy and for selling out all the worthless vessels and machinery.

Mr. MORGAN, (dem.) of Ohio, another member of the Committee on Appropriations, replied to Mr. Hale, and charged the Navy Department with waste and extravagance. He denied the accuracy of the figures quoted by Mr. Hale as the expenditures of the navy before the war, and referred to the reports of the Register of the Treasury to show the discrepancies.

Mr. GARFIELD explained how the apparent discrepancy was to be accounted for.

Mr. MORGAN denied that the explanation was a correct one, and undertook to prove to the House and the country that there was chaos in the Treasury, chaos in the Navy, and chaos in every department of the government. In the course of a long speech Mr. Morgan reviewed the course of the administration in reference to the public debt and to the expenditures of the government, claiming that there were alarming discrepancies in the various reports of the departments. He denied that any official of the government, from the President down to a page in the House, had any correct idea of what the public debt was.

Mr. BECK, (dem.) of Ky., inquired of Mr. Garfield whether the Navy, the War and other departments of the government were not in the habit of selling material and turning over the proceeds in addition to the appropriations made by Congress.

Mr. BANKS, (rep.) of Mass., said that that was not the case now.

Mr. DAWES remarked that the navy and other departments did dispose of material and use the proceeds for the public service, but there was no law requiring annual reports of such sales to be made to Congress. He agreed with Mr. Beck that the defect in legislation to that effect should be remedied.

Mr. BECK said that the question was whether all these sales should not be added to the appropriations, and whether they did not swell the expenditure by $100,000,000. He asserted that such was the case.

Mr. STARKWEATHER, (rep.) of Conn., made some remarks in further illustration of the wretched condition of the navy.

Without making any disposition of the bill the committee rose, and the House at twenty minutes after four adjourned.

THE LEAGUE AND THE LADIES.

The Annual Reception of the Union League Club Last Evening—Art, Music and Dancing Combined to Make the Fair Friends of the Members Happy.

The Union League Club Rooms were a pleasant scene last evening. It was the appointed time for the annual reception given by the members to their friends of the gentle sex. Accordingly the finely furnished parlors, drawing rooms, galleries, &c., were decorated with flowers and pictures, and were glittering with a brilliancy of gaslight a long time before the first guest arrived. The tables in the supper rooms were arrayed in shining white cloth and laden with bright china and silver, and the glossy black waiters stood about with their proverbial dignity and towels flung carelessly over the left arm, while the captain and the "chief cook," as well as the "bottlewashers" went hither and thither in a terrible flurry.

Conspicuous was the master of ceremonies—a tall, graceful, gentle-voiced young gentleman, whose very step, however, had the air of punctilious ceremoniousness, and whose habiliments, of the very darkest and most glossy black, sat upon him with that rare quality of grace, palpable unconsciousness. Who ever saw so elegant a swallow-tail, otherwise irreverently called a claw-hammer! And so ravishing a cravat as was shamed by its very immaculateness by the glorious roundness of the towering neck! So Swinburne would say, in sympathy with the gentle creature for whose eyes a master of ceremonies most usually arrays himself. What cares he for the sterner mortals who rival him in all that constitutes his fame?

The rain pelting piteously without did not presage very crowded festivities; but at about nine o'clock the close, gloomy cabs began to dash up to the entrance to the canvas archway that led to the vestibule, and ladies alighted in company with their cavaliers and walked quickly by the martial sergeant-at-arms and up stairs to the dressing rooms. If the vexed weather out of doors clouded their thoughts and slightly chilled their spirits the cheerful interior acted as a charm to beget most pleasant moods and dispel all lugubrity. The gallery was enriched with paintings loaned by some wealthy gentlemen, who are lovers of art, to grace this occasion. Many of these have not yet been submitted to a public exhibition and come almost fresh from the studios; others are somewhat celebrated. A beautiful interior scene, belonging to J. H. Sherwood and painted by S. J. Grey, "The Tangled Skein," represents a young maiden, with soft, light skin and golden brown hair, engaged in winding yarn from the skein, which is held by her brother, a small boy, whose back is toward the spectator. The girl's face is the index of the effect in which the predicament—the tangled condition of the skein—shows her to be, and is a delightful study. The expression is not one of vexation—something far gentler and better. The other two figures in the picture are in the background of the room, and not important. The head of a "Circassian Slave," by E. Fedder, and owned by Mr. J. W. Bigelow, is very true to art and very beautiful. There are beside S. R. Gifford's beautiful woodland scene of "The Clove in the Kaatskill;" the "Young Nurse," by Bougereau, and "Industry," by Meyer Von Bremen. Both of the latter are owned by ex-Governor Morgan. The last is well known and admired. The others in the collection worthy of note are that of T. Buchanan Read, "Hiawatha Bearing Minnehaha Home;" Bellini's portrait of Cassandra Fidele, Winslow Homer's "Country School," J. M. Hart's "Afternoon Loitering in the Stream," Gifford's "Lazy Day in Egypt" and the "Peace and Plenty" of Rubens and Snyder.

The dancing took place in the theatre, the stage of which was covered with a forest of flower-laden plants, behind which was hidden the orchestra. Flags and banners were hung on either side. The order of dancing was as follows:—

PROGRAMME.

1.	Overture	Cheval de Bronze
2.	Valse	New Vienna
3.	Quadrille	Bijouterie
4.	Galop	Fountainespiel
5.	Valse	Pandekten
6.	Galop	Sans Souci
	Promenade	La Perlenoie
7.	Lanciers	Cinderella
8.	Deux Temps	Il Etoile d'Or
9.	Galop	Nameless
10.	Valse	Mignon
11.	Galop	Jockey
	Promenade	Attila
12.	Lanciers	Les Brigands
13.	Deux Temps	Tanz Prioritaten
14.	Galop	Il Etoile d'Or
15.	Valse	Thousand and One Nights
16.	Galop	En Fleine Chasse
17.	Valse	Rheinsagen
18.	Galop	Sturm Scaritt

Music by J. M. Lander.

THE SINS OF ERIE.

Elmira Politicians Making Capital Out of the Much Abused Managers of the Erie Railroad.

ELMIRA, N. Y., Feb. 13, 1872.

The annual town elections occurred in Chemung county, N. Y., to-day. In each of the towns meetings were organized for the purpose of expressing the views of the people on the subject of the present management of the Erie Railway and the repeal of the Railroad Classification act. All the leading men of the towns took part in these meetings, and resolutions strongly endorsing the present management of the Erie Railway, and in opposition to any antagonistic legislation, and especially to the repeal of the Railroad Classification act, were passed.

THE NATIONAL CONVENTION.

The Missouri State Labor Reform Association's Appointees to the Great Meeting at Columbus, Ohio.

ST. LOUIS, Feb. 13, 1872.

The State Labor Reform Convention met in Turner Hall to-day to elect delegates to the National Convention to be held in Columbus, Ohio, on the 21st of February. The following delegates were chosen:—At large—D. H. French and H. W. McKee, of St. Louis. By districts—R. C. Silence, W. H. Randolph, L. Beattie, J. S. Hansman, George W. Bowen, William Harper, A. E. Glenny, James S. Rollins and John W. Shockey.

The delegates are instructed to act in the National Convention with a view to making the Presidential nomination and to oppose anything calculated to compromise the labor reform party.

THE DEBTOR PRISONERS.

TO THE EDITOR OF THE HERALD:—

On reading my HERALD Sunday morning I perceived that the Supreme Court had reversed the decision of His Honor Judge Barnard in discharging from prison those poor unfortunate debtors. Now as we are in the age of reform should we not also give those poor debtors a chance? I am sure you, yourself, will cheerfully respond, yes. I would, therefore, ask you, Mr. Editor, to suggest to some of our noble-hearted lawyers who are representatives of reform in our Legislature to take the matter in hand and have the law either repealed or amended so as to give these unfortunate men once more a chance in this world. Yours respectfully,

A TEN YEAR SUBSCRIBER.

A WINDOW SMASHER.

Michael C. Donahue was arrested on Monday night by Officer Devoe, of the Sixteenth precinct, upon complaint of Moses Denaubaum, of No. 297 Eighth avenue, who charges he smashed one of the show windows of his store, valued at $225. The prisoner was arraigned before Justice Cox, at Jefferson Market, yesterday morning, and committed for examination.

PROPORTIONAL REPRESENTATION.

Important Opinion as to the Constitutionality of Proportional Representation, Proposed in the New City Charter.

NEW YORK, Feb. 10, 1872.

JAMES M. BROWN, Esq., Vice Chairman, &c.:—

At the request of the Committee of Seventy, communicated to me through you, I submit the following legal opinion concerning the constitutionality of the clauses concerning proportional representation in the charter for the city of New York proposed by the committee to the Legislature. Yours truly, THEODORE W. DWIGHT.

Opinion.

The question has been raised whether that feature of the charter for the city of New York proposed by "the Committee of Seventy," known as the principle of "proportional representation," is constitutional.

In considering this point I shall first notice the clauses in the charter bearing on the subject, then refer to the sections of the constitution with which it may be thought to conflict, and finally compare the two instruments so as to determine the question of constitutionality.

I.—The plan of "the Committee of Seventy" adopts the principle of "proportional representation" not only in the organization of the board of Aldermen, but also in some of the executive departments. The case of the Board of Aldermen will be first noticed. For the purpose of an election of this Board the city is divided into five districts, corresponding with the Senate districts of the State. Nine Aldermen are to be elected in each Senate district, thus making the Board of Aldermen to consist of forty-five members. The proportional principle is introduced into each district. Its main feature is, that any voter in the district may cast all his votes for one candidate or for nine different candidates, or a less number, and in this last case, in such proportion as he may see fit. From those votes, the nine persons having the largest number of votes shall be declared elected. Then there follow some subordinate provisions in case nine persons are not voted for, and also in case an election of any person fails in any district, because he receives a vote equal to that of some other person. In this last case, the members of the Board of Aldermen actually elected are to select by lot persons sufficient to make up the full delegation from the district.

The executive departments, into the organization of which the principle under consideration enters, are composed in general of five members. The leading features of the mode of election may be shown by the case of the Department of Public Works. It is composed of five members; one of these is appointed by the Mayor; the remaining four are "elected by the Board of Aldermen" within a prescribed time. It might be more accurate to say "appointed" by the members of that board. The plan of election is, that each alderman shall give not more than four open ballots, upon each of which shall be found the name of one candidate for the office of commissioner. The voter may give four votes for one candidate, or may vote for four different persons or a less number, in such proportion as he may see fit. The four persons having the largest number of votes are to be deemed elected. There is also a provision for a new election in case the number of four commissioners is not secured by this method.

II.—I have next to refer to the provisions of the State constitution of 1846, with which it may be supposed that this method of voting would conflict. The only clause of this kind, as it seems to me, is that found in the general clause conferring suffrage on the citizen and in article iii, section 2. It will appear in the course of the discussion that there is no abridgment of the general right of suffrage, and special reference will now be made only to the tenth article, section 2. It is in the following language, as far as this point is concerned:—"All city, town and village officers whose election or appointment is not provided for by this constitution shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose."

The inquiry now is, is there any conflict between this constitutional rule and the method of proportional representation? It should be remarked that this is a new question, upon which the reported decisions of the Court shed little, if any, direct light. In order to discuss it properly it will be necessary to consider the object of the constitutional clause, to refer to the decisions of the Courts in the way of interpreting it, and to analyze with some care the nature of "proportional representation" in the various forms which it assumes, as well as the effects, beneficial or injurious, which, from a course of general reasoning, may be fairly be attributable to it. These views will first be applied to the election of the aldermen, and subsequently to the selection by the members of the Board of Aldermen of the executive officers of departments.

The origin and object of the clause in the constitution may be traced in the state of affairs before that instrument was adopted and in the debates of the convention. It is a part of the political history of the State that, prior to the adoption of our present constitution, there was great dissatisfaction among the people with the exercise of the power of appointment to public offices by the central authority at Albany. Into the causes of this dissatisfaction it is not necessary to enter. It is enough to say that its influence was largely felt in the Convention that prepared the constitution. The section now under consideration was, among others, framed to carry into effect the supposed popular will upon this point. The debates in the Convention show that the sole object of it was to take away the power from the centre and to confer it upon local authorities or the people. There was an attempt made by its opponents in the Convention to strike it out. A leading member (Mr Patterson) said—"If that be carried it would give the Legislature the power to allow the Governor to appoint all the local officers." Debates (Atlas ed.) 1,011. The chairman of the committee who reported this and other clauses concerning local officers, when reporting their scheme, remarked:—That the committee had endeavored, as far as possible, to strip the Executive of patronage, believing that it was desirable that the central patronage and influence should be diminished, if not entirely obliterated. This had been, he said, a great source of complaint, and there seemed to be a general disposition to cut all this thing loose from the Capitol. (P. 1,008.) These extracts show very plainly that there was no design to regulate, in any degree, the modes of election, or to diminish the control of the Legislature over them. The Convention had its eye fixed upon the Governor, with a determination to disrobe him of his power. It had resolved that the source of political power, in a certain class of cases, shall be local and not central. Wisely did that body abstain from laying any further restrictions as to this subject upon the Legislature. An attempt made by one of the members to regulate the term of office and appointment of a leading local officer, the Mayor, was promptly voted down. In my judgment nothing can be implied from the constitutional clause in question against the fullest exercise of discretion by the Legislature in adopting either the system of election or appointment, or in fixing the number of such officers, the terms of office or the modes of election or of counting or of certifying votes. All these are but parts of the machinery which the Legislature resorts to in order to obtain suitable officers. This they must do through the alternative modes of election or appointment. When election is resorted to the constitution requires that the officer shall be elected by the electors of the city or "of some division thereof." These last words were not found in the original draft of the section, but were inserted at the suggestion of Mr. Charles O'Connor, in order to permit the election, should the Legislature see fit, to be had in large districts which are not wards. (Debates, p. 1,012.) Accordingly the election can be had throughout the whole city or in large or small districts. Not a word is to be found as to the manner in which the votes shall be given by the electors within the city or its political subdivisions.

There are no legal decisions which conflict with these positions. As far as they go they are in harmony with what has been here maintained. It would appear that Aldermen must be considered as "officers" within the meaning of the constitutional provision. At least, it has been so decided in respect to corresponding cases of village trustees. It has been held accordingly that they must be selected by some local authority, either by the electors or by some authorities of the village. People vs. Blake, 49 Barb., 9. Any attempt on the part of the Legislature to vest the power of selection in the Governor and Senate, or in anybody not having a purely local character, as, for example, in the former Board of Metropolitan Police, is unconstitutional and void. Cases in which this point has been decided are, among others—People vs. Board of Metropolitan Police, 48 Barb., 524, affirmed by the Court of Appeals; Shuster vs. Metropolitan Board of Health, 49 Barb., 454; Devoy vs. The Mayor, 36 N. Y., 449.

The result of these and other decisions is, that the power of appointing local officers must be vested in some authority having a local origin. Such local authority may, at the discretion of the Legislature, be either the whole body of the electors or the electors in some division, or it may be, in the case of appointment, an individual or a board. There is no more restriction upon the mode of election than upon the mode of appointment. Both are absolutely at the discretion of the Legislature.

The inquiry which remains is this, Does the plan of "proportional representation" by the Committee of Seventy contemplate an "election?" Would the aldermen chosen under it be elected by the electors of the city of New York or of some division thereof?" If it be an election at all, it is a clear case of election by a division of the city. The Senate district is a political division within the city limits. The language of the proposed charter is only employed as a convenient mode of designating such city division. The aldermanic district, by express provision, does not change, though the Senate district should be hereafter altered. It is, therefore, a clear case of a "city division," and comes within the intent of the constitutional provision as previously shown.

Before directly considering the constitutional question there are some preliminary remarks which should be made tending to show the exact nature of the inquiry.

One of these is that the proposed charter observes and adopts all the ordinary machinery of elections. It adapts itself to the existing system in all respects, as far as casting the vote is concerned, collecting and scrutinizing the ballots, &c.

Again, the election is local. No votes are to be cast except by persons ordinarily entitled to the elective franchise in the Senate, or, as it may be termed, aldermanic, district. It is also true that no right of any voter is abridged. Every one still has the right of suffrage conceded to him by the constitution in the general terms of the article regulating the suffrage of the citizen.

Moreover, no distinction is made among voters. Whatever power is conceded to one is allowed to another. All are placed upon terms of absolute equality.

It may further be stated that no new right is conferred upon the voter by the proposed charter. At the present moment, and without any legislation, any voter having nine votes to cast on the same ticket for candidates for the same office may cast them all for one man. I do not say that, under the present law, all such votes would be counted in favor of the candidate, but it is certain that they could all be cast. Perhaps not more than one could be counted. The ballot, however, could not be excluded from the ballot box, and in some form or other it would have to be noticed as a lawful ballot. This proposition is absolutely settled. Says Cushing in his "Law and Practice of Legislative Assemblies," page 89:—Every person possessing the qualifications required by the constitution and laws of the State in which he resides has a right to give his vote at all elections for whomsoever he pleases, whether a candidate or not, and whether eligible or not, citing also Male on Elections, 30, note. It is plain that if there be any unconstitutionality in this clause of the proposed charter, it must consist in the direction that the county canvassers shall take those votes into account in determining the result of the election. In other words, the want of conformity to the constitution, if it exists at all, is not in the act of voting, but in the act of counting and estimating results by the canvassers. It would consist in the fact that the Legislature directed them to count certain votes which ought not to be counted.

But should some one insist that the Legislature has conferred a new power upon the voter, and that this enactment is unconstitutional, the answer would be plain. The Legislature, at the utmost, gives the voter his choice to do an act which all concede to be lawful—that is, to vote for nine different candidates, or to cast all his votes for one person, which, for the sake of argument, will, for the present, be conceded to be unlawful. What then? There is no wrong done until the voter exercises his choice. It cannot be affirmed that the voter will ever exercise the choice to do the unlawful act. The result is that should he ever vote in the unlawful manner it is not the law which causes the illegality, but it is the act in which the will of the voter is involved that is illegal. He has simply cast a vote which cannot be counted. This principle is well settled in the analogous case where the owner of land grants to another the power to give an estate to distinct persons, some of whom are permitted to take it and others are prohibited by law on account of their remoteness in point of time. The power is valid in that case; any illegality can only be found in its mode of exercise. If it is exercised in favor of the lawful persons the exercise is lawful. If a person is selected who is too remote the act is illegal and void. (Griffin vs. Pownal, 15 Simons, 393; Burton on Real Property, sections 792, 793; Lewis on Perpetuities, 487, 491.)

But take the worst view of the case, and suppose that the clause for cumulative voting is unconstitutional. Then, as that can be separated from the rest of the law, that clause only would be void, and the rest of the charter would stand. (Matter of De Vancene, 31 How. Pr. 289, 343; People vs. Toynbee, 3 Kern. 441.) If those views are correct, what would be the effect upon the charter in case the cumulative vote should be declared irregular and unauthorized? I apprehend that no one will assert that the Legislature could not permit one of the names to be counted. The wrong would then consist in estimating the additional right. If such a canvass were illegal those votes would simply be left out of account. The election would be regular, but there would be a certain number of votes cast for incapacitated candidates. The consequence would be the same as it would be at an election at this moment if a vote were cast for an incapacitated candidate. That would not vitiate the election, although the vote would have no result. What, then, would be the effect? Simply that those candidates would prevail who received the greatest number of votes that could be counted and canvassed. Common sense teaches us that the dominant party will hardly venture to cumulate its whole vote, but will cast some of its ballots for different candidates. There will be, beyond all reasonable doubt, some ballots on which the names of nine different candidates would appear. These persons would be elected. Thus there is no anarchy, no confusion. We are not left without a government. If the law turns out to be so far inoperative that the cumulative vote cannot be counted the prevailing party succeeds as it would do in the old method by general ticket throughout the Senate district.

These suggestions are made, not because there is in my mind any doubt of the constitutionality of "proportional representation," but to assure the timid and hesitating that they have no evil consequences to apprehend from the result of what may seem to them to be an experiment. If it proves to be a constitutional failure they are in substantially the same condition as at present. The wheels of government are not clogged. There would be but another instance of a futile though praiseworthy effort to relieve ourselves to some extent, from the despotism of party—an effort failing, not on account of any intrinsic defect, but by reason of the pressure of a constitutional provision designed by its framers to accomplish no such effect.

Dismissing from view the preliminary topics, I now propose to grapple with the main question. Is it illegal or unlawful for the Legislature to direct the county canvassers to take the cumulative vote into account in estimating the vote at an election? Is it contrary to the provisions of the constitution of 1846?

It ought to be remarked that the Legislature has complete powers over this subject (possessing the whole legislative power of the people), except so far as it is restrained by express constitutional provisions. (Bank of Chenango vs. Brown, 26 N. Y., 467.)

It should be added that a provision of law is not to be treated as unconstitutional, except upon grave and weighty grounds. The judicial mind should be clearly satisfied that the act is contrary to the letter and intent of the constitution. (Fletcher vs. Peck, 6 Cranch, 128; Newell vs. The People, 7 N. Y., 103.) This remark is particularly applicable to the case where the object and intent of the law are in a high degree beneficent or plainly calculated to achieve useful ends and to remove or alleviate defects in the practical working of social institutions. It can scarcely be supposed, in such a case, that the framers of the constitution could have intended to prohibit such advantageous and progressive legislation, unless the language imperatively requires that construction. Fortunately, in the present instance, there are no such words, and the discussion is open to a wide range of considerations as to whether the spirit or intent of the constitution is assailed.

Those who oppose this charter on the ground of the unconstitutionality of counting the cumulative vote must claim that this mode of voting is contrary to the general notions involved in the idea of a popular election. It would seem that no other possible constitutional objection could be urged. An inquiry into the general ideas involved in an election goes to the very foundation of representative government.

The most satisfactory way of discussing such a question is to consider the general principle of "proportional representation," and afterward to refer to the cumulative vote as one of its methods.

What, then, is an election for a legislative body under the representative system? I concede that we must take the essential elements of representation, as of the time when the constitution of 1846 was adopted. It was then, as well as now, in substance, a plan by which a certain portion of society called "electors" chose persons to stand in their place and do for them, in the way of legislation, what the electors would presumably do for themselves, if personally present. The "electors" inhabited a defined territory, and cast their votes according to certain well-settled rules, established for the purpose of showing their qualifications and fairness in voting. Each voter had equal weight with any other, and rules were provided to secure accurate computation and estimate of votes. True representation would require that, in some form, the will of the electors who had the majority of votes in the district should outweigh that of the minority.

It is not, however, of the essence of an election that every voter should have a right to vote for all his representatives. If it were it would be necessary that the entire Legislature should appear on each voter's ticket. Here the representative system allows a liberty. The system of election by "general ticket" has been almost universally abandoned, though it still prevails in the case of Presidential electors. An imperfect plan, called "election by districts," has largely taken its place. This change was avowedly made in the interest of minorities.

The constitution expressly leaves the liberty to the Legislature to adopt "the general ticket system," or that of large or small districts in the election of city officers. The important remark is that the introduction of the single district system established the proposition that, in the judgment of the people, it is not necessary to the integrity of the representative theory that the same result should be reached in each mode of representation. In fact, this plan of single districts often gives the preponderance of votes in the legislative body to a minority of an entire county or State. The essential feature in an election under the doctrine of representation is that the electors within a defined territory may arrange themselves into groups, so that those who have a preference for a particular representative may be able to concentrate their various wills upon him. The mode of grouping is arbitrary. True, from long habit, American voters have come to suppose that the wisest result of the representative system is to divide a territory into districts sufficiently small to elect a single representative, then to place one candidate against another, and then to award the place to the candidate having the most votes. But this is only a mode of proceeding, and not the only one, which the representative system warrants. On the other hand, representatives within a city or a territorial division might be selected on another principle. The electors might be grouped together in any manner which would secure a number sufficient to be entitled to a representative. Thus should there be 9,000 voters in a district entitled to nine representatives, any system which should secure as a true, fair and deliberate choice of the electors, 1,000 votes for each representative, no matter what tie united them, would amount to an election, and the representative might be said to be chosen by the electors of the district. It is just as truly an election as if nine different candidates were placed on each ticket. The electors in both cases are the same, the district is the same, the methods of election are the same. The only difference consists in the way in which the electors group themselves together. They may have more freedom and elasticity of action in the first case than in the last; but that is in favor of the plan of proportional representation rather than against it. It cannot be said that such a method defeats the will of the majority. Any five thousand voters in the case supposed must have more weight in the representative body than any four. There is no system which gives the majority its due weight and no more except one of the forms of "proportional representation."

I repeat, then, that the so called plan of "proportional representation" is nothing but a piece of political mechanism by which electors are more free than under the present plan to arrange themselves in groups and concentrate their votes on a chosen representative. It belongs to the methods of representation and not to its substance. There is nothing in the constitution to prevent the Legislature from varying the mode of election long as the substance is preserved.

It will, however, serve to strengthen this view of the topic if attention is paid to the beneficial results which may reasonably be expected to flow from the system. The more truly representative it can be shown to be, the stronger is the argument that a true, a real "election" will take place under it.

It will be necessary to state briefly the general theory of "proportional representation." It assumes a number of forms, all designed, with greater or less completeness, to permit the electors of a minority to have a vote in the legislative body corresponding to their numerical proportion to the whole body of electors.

It is perfectly well known that, under the old "general ticket" system, a majority of one would exclude the voice of the minority altogether. The single district system increases the chances that the minority will have a voice in the Legislature, but does not secure it. The system of "proportional representation" absolutely secures, where a minority amounts to a considerable number, a representative in the Legislature. It is not necessary to detail the various devices which have been resorted to for this purpose, of which there are six or more. Suffice it to say that they are all devices to accomplish this purpose—"ingenious political machinery," and nothing more. They are means to an end. They may be to some extent experimental, but