(*Continued from Fourth Page.*)

the house is dividing for the purpose of ascertaining the result. This debate is therefore out of order, though the Chair will permit it should no objection be made.

Mr. GOODE. I would say in answer to the gentleman from Richmond, (Mr. LYONS.) that it was thought by the committee, that some other tribunal might exercise jurisdiction over some subjects that might arise. For instance some other tribunal than the court might be appointed to determine upon the votes of precinct elections. Perhaps it might be some board of commissioners for the county, to which the gentleman from Wood (Mr. VAN WINKLE) has referred, that could with propriety exercise some discretion instead of having all cases referred to the courts. These are the views that operated upon the committee, though I confess that it is a subject that I have taken no interest in it at all.

The result of the count was announced, and it appeared that Mr. CONWAY's amendment was adopted, ayes 50, noes 22.

Mr. PRICE. I would inquire if a motion to strike out this section did not carry, if a motion to strike out a part of the section would then be in order.

The CHAIR. It would be in order if the vote to strike out the whole section be with a view to insert something else.

Mr. LYONS. I would suggest to my friend, that perhaps he could attain his object by an addition to the section. We would not be willing to grant to any other tribunal than the courts, as for instance to a commissioner or attorney general or any tribunal that the legislature might choose to create, the power to grant divorces, change the names of persons and direct the sale of infants' estates. But from that point you may add just what you please in respect to other tribunals and determine their jurisdictions. For instance, you could establish precinct elections, and make arrangements in respects to counties and all matters of that sort.

Mr. PRICE. I understand the explanation of the gentleman from Richmond (Mr. LYONS.) I think that there is something in the view of the gentleman from Ohio (Mr. JACOB,) that the latter part of the section is more extensive than the first part. The latter clause reads:

"But shall not by special legislation grant relief in such case, nor in any other case over which the laws may have conferred jurisdiction on the courts or other tribunals."

That is, they shall not legislate specially at all upon any subject, upon which they have legislated generally. Now, suppose that a case of this sort shall occur. The legislature by general legislation has conferred jurisdiction upon a subject upon some tribunal, and it is found that that tribunal cannot afford relief. Now, it seems to me that the section might be made a little more distinct by striking out all after the word "which" in the fifth line, as follows: "the laws may have conferred jurisdiction on the courts and other tribunals," and insert the following, "by law the courts or other tribunals have jurisdiction and can afford relief," so that it will then read:

"But shall not by special legislation grant relief in such case or in any other case over which by law the courts or other tribunals have jurisdiction and can afford relief."

Now, when the gentleman from Ohio (Mr. JACOB.) was commenting upon this subject, it struck me that by possibility some such case as I have supposed might arise. Might you not, by general law, confer jurisdiction upon the court and that court be unable to afford the relief required or any relied at all? Suppose that you confer upon the courts the power to grant divorce that is from bed and board, and a strong case is presented calling for a more extensive relief, divorce *a vinculo matrimonii*. Now suppose that case is applied to the court for relief, what relief does the party get? Why just precisely such relief as that court is authorized to grant, a divorce merely from bed and board. As many gentlemen seem to dissent, I do not desire to press it. I suppose very probably that the law conferring jurisdiction will vest in the court discretionary power to afford such relief as the nature of the case may require.

Mr. CONWAY. I hope that no such amendment as that submitted by the gentleman from Greenbrier, will be adopted to this section. If I understand the effect of the amendment it seems to me that it will defeat the very object which we have in view in this section. If you authorise the legislature where the courts cannot grant adequate relief to grant a divorce, the legislature will take——

Mr. PRICE. The gentleman misunderstands me entirely.

Mr. TAYLOR. I rise to a question of order. There is nothing now before the committee, and I submit whether this debate is in order.

Mr. CONWAY. I have a perfect right to submit my views upon the section as it stands.

Mr. TAYLOR. And I have a perfect right to call the gentleman to order.

The CHAIR. The question before the house is upon striking out and inserting the amendment of the gentleman from Albemarle. So that varies the whole question of comparison between the amendment and the original section.

Mr. CONWAY. My remarks were appropriate to the subject. The amendment submitted to the 13th section proposes that that clause shall be modified and it was with that view I was making my remarks.

The CHAIR. The Chair did not understand the gentleman as taking any other view of it, and his remarks were in order.

Mr. CONWAY. I understood the gentleman from Ohio as expressing some idea that a modification should be made. My remarks were in favor of sustaining the original section unmodified.

Mr. PRICE. My friend did not exactly apprehend my idea; I offered no amendment, I suggested none. The gentleman from Spottsylvania will observe that the latter clause of this section is much more comprehensive than the first clause. The first clause embraces three distinct classes of cases. The latter clause not only embraces these three classes of cases, but every other conceivable class upon which the legislature has chosen to legislate heretofore. Now I think in all probability a case may arise of a class embraced in this latter clause, in which by general laws the courts could not grant adequate relief. Such questions often occur where relief is afforded by the legislature which is not in either of the three classes which precede, because no adequate relief will be afforded under the general law. In the classes embraced in this comprehensive phraseology we can imagine an inconceivable number of cases of every shade and hue.

Mr. CONWAY. I understand the latter clause of the section as doing that, and that commended it very much to my support. It was to prevent this special legislation that the latter part of this clause was stricken out, and it was for that reason that it commanded my entire approbation. It was because I desired that we should condemn this system of special legislation, this system which induces the legislature, upon circumstances not properly made out, to sit as an appellate court and afford relief in particular cases where it would not afford relief under a general law. I say it was precisely because this latter clause was more comprehensive and because this latter clause denied the legislature the power to afford relief in special cases, where that relief would not be afforded under a general law that, it commanded my entire approbation, and I desire to permit no change. And in view of the remarks made by the gentleman who offered the amendment, that adequate relief could not be afforded, I meant to state and show that it was exactly upon that ground that you find the legislature of Virginia, after having conferred upon the courts of the country entire jurisdiction over this matter of divorces, last winter, in despite of that the legislature declaring that the court did not and could not grant adequate relief, and that they took that jurisdiction and exercised it by divorcing hundreds. I say if you authorize the legislature, by acts of special legislation to interpose in cases of peculiar hardship—and these cares are made out when they are presented to the legislature upon *ex parte* statements—you defeat the whole legitimate object of this section, which as I have shown, was to deny to the legislature the power of interposing in cases where the appropriate tribunals are the courts of the country, those courts in the immediate vicinity of which all these matters have transpired that have to be examined and passed upon by them. I am utterly opposed to removing such cases from these appropriate tribunals to the legislature of Virginia, a tribunal that cannot be as fully and fairly informed of all the questions at issue, as the courts of the country.

I do trust this 13th section as it now stands will be adopted. And I believe that one single section will accomplish more good than any other section of the report of the legislative committee. I trust it will be the pleasure of the committee to sustain it as it is.

Mr. JACOB. I understand this question now properly before the committee to be upon striking out. Upon that I wish to say a word or two. I have no disposition to quarrel with the gentleman upon my left (Mr. CONWAY,) or the gentleman upon my right, (Mr. PRICE,) in regard to their own opinions, or with the confident assurance with which they are uttered. That is all commendable and proper. I have no disposition to complain of any gentleman who is perfectly confident that what he proposes is just. But I wish to make a remark or two in support of the proposition to strike out this section. When the question occurs on the amendment of my friend from Albemarle it will come up upon its own merits. As I understand the word "may" has been stricken out, and it is now that, "The legislature shall, by law, confer on courts or other tribunals the power to grant divorces." Now I take it that when the courts undertake to exercise the power, they undertake to exercise it according to known laws, and that though they undertake to grant divorces *ad libitum* or according to the will of the court, they are governed by some rule. Well I believe the lawyers know there are two classes of divorces and I apprehend the gentleman from Fredericksburg (Mr. CONWAY) understands that very well. I have no doubt he has had some practice with both the classes. There are divorses as they say from bed and board, and divorces *a vinculo*. Well, if these cases arise, the courts will adhere closely to the distinction established by former decisions, by the ecclesiastical courts of England, and by the corresponding courts in this country. The courts will adhere to known established rules and precedents. We do know as a matter of fact that cases do arise sometimes, in which according to known and established cases, the only relief the court can grant is a divorce from bed and board, when it would be proper to grant full and complete divorce, one absolute to all intents and purposes.

The first divorce case I ever remember of hearing of that attracted much attention, came before the legislature of 1824. The parties were of distinguished names living not far South of this city. Their names I shall not repeat however. I remember a case—and it may perhaps be considered an argument in favor of the gentleman's proposition—when in the legislature a petition for a divorce was read, and the evidence exhibited, we by acclamation granted it, and I am not sure but we would have hung the husband if he had been here. But I will detail one circumstance that marked that case, as illustrating forcibly the argument which I wish to support here. It was this: The man, as was shown in that case compelled his wife to wait on his servant, a yellow girl that he kept. That was the fact. There were many other circumstances equally enormous, yet the courts would not have granted relief at all adequate to the injury. I remember an anecdote of Mr. Morris of Hanover, with whom it was my pleasure to serve on two occasions, and who was no ordinary man in his attainments as a scholar and a wit. A complaint was made in his presence in regard to the legislature granting divorces, and some one remarked, complaining of the evil arising therefrom, that the legislature would, in one case grant a divorce to-day and to-morrow in a case very similar refuse one. "Exactly so," he replied, and that very fact constitutes one of the strongest arguments in favor of the existing rule," referring to the fact that the court would not grant a divorce *a vinculo*. And he made this, in my judgment, sound observation. Says he "if you give the courts the jurisdiction they must act upon known and established rules, and the parties in the country will contrive when they want divorces to bring their cases within these known and established rules." "But," he added " when they must go before the legislature where there is no known and established rule, they cannot make their case to fit the evidence. They must take their chance."

I know that in the State of Ohio the courts have the jurisdiction just as is is here proposed. And it is a fact that there are ten divorces in proportion to the population, there, where there is one here. I do not apprehend it is because the people here are any better than they are on that side of the river.

While I do claim that the people of my district are as good as the people on the Ohio and Pennsylvania side, I do not claim that they are any better. I know that there are many more divorces on the Ohio side, than on our side of the river. I know further, that since jurisdiction has been given to the courts to grant divorces *a vinculo*, that the number of divorces have multiplied in my own district. I know of cases, and I apprehend the experience of other gentlemen will bear me out in the observation, where a husband, for example, applies for a divorce, or if you please, where the wife applies for a divorce, where the other party in fact wants a divorce too, and what do they do? They wink at evidence, which all lawyers of large practice know is collected to prove some trivial passing charge, and which can be very easily proved in almost every imaginable case. Thus divorces are facilitated. Hence, for myself, I would prefer that this matter should occupy the old position. But that is not the precise purpose for which I rose. I say that, notwithstanding you may confer upon the courts a jurisdiction which it is proper to confer upon them over the subject of divorces, yet in the exercise of that jurisdiction and that sound discretion which the courts ought to use, there will be cases in which they cannot grant relief, and where common sense and proper feeling demand that relief should be afforded.

The observation was made by my friend from Spottsylvania (Mr. CONWAY) that he desired to prevent special legislation for special cases. I think I quote his language upon that subject. It is precisely for that reason that I am opposed to it. When you will show to me that you can anticipate special circumstances, and what will be the proper relief in all time to come in special cases, then I will admit the conclusion, and not before. But you cannot do it. It is not in the power or wit of man to do so. It strikes me, that we are acting very much upon the supposition, that all the wisdom would die out when we were dead and gone. [Laughter.] I apprehend that such a principle is wrong in theory and wrong in practice. I do not intend to make a personal allusion to gentlemen here by the remark, but I wish to illustrate the idea.

Let us take up another clause of this section. "The general assembly shall confer upon the courts power to direct the sale of estates belonging to infants." What do you intend to do in this case? What sort of power is to be conferred upon the courts? I apprehend that no gentleman present intends, that courts are to sell all the real estate of the infants in the country. That shows that the only intention is to confer upon the legislature the power to authorize the courts to grant and sell the infant's estates in some cases. This shows that the legislature, at last will have to define the class of cases in which the courts will have this power, and thus by endeavoring to provide against present mischief you will probably prevent the courts or the legislature, by a constitutional enactment, from affording relief in special cases that may arise in the matter of infants. Heretofore the legislature of Virginia has been very jealous of granting to the courts, or any tribunal, the power to sell infant estates. I confess, that were I about to leave the world with infant children behind me, and a little property to leave for them, one of the things I should be concerned about would be, lest the courts should get hold of these estates. I tell you when the courts can get hold of infant estates under some general rule that you undertake to throw around them, the step-father, selfish guardian, or some selfish left-handed friend, through the skill of some able lawyer who is employed in the matter, will make out a case, and sustain it, by which they will be entitled to the management of the estates, and by which the children's acres will be turned into dollars, and before the children come of age the securities are all gone. For all those reasons this proposition does not commend itself to my judgment or affections at all. I would rather leave the matter as it is at present. If the legislature which is to come after us think proper to pass laws giving to the courts jurisdiction over these subjects, I am willing that they should do it. But I am not willing to constrain and compel them to act on such a delicate subject. Nor am I, on the other hand, willing to say, that in special cases which may arise where the courts cannot grant relief, nobody shall. For these reasons I am in favor of striking out the section.

Mr. TRIGG. I suppose the object is now to perfect the proposition as far as possible before it is voted upon. It has occurred to me, that the definite article "the," in the proposition is, perhaps, rather too broad. The imperative "shall," inserted in the place of "may," would seem to imply that "the legislature *shall* confer on the courts," and that it might apply to all the courts of the Commonwealth the powers here indicated to be conferred. I would respectfully suggest whether an amendment in that particular would not be advisable, to say that "the legislature shall, by law, confer upon one, or the same courts." I do not suggest the amendment with any purpose of sustaining the proposition as reported by the Legislative Committee. In my opinion, the proposition which has been offered by the gentleman from Albemarle (Mr. SOUTHALL) is better than that reported by the committee, or than the various amendments which have been suggested by other gentlemen who have offered propositions at all. I feel unwilling to divest the legislative power of the country of the supreme law-making power which it possesses. They are the representatives of the sovereign will of the people in making the laws of the land. I think, as far as practicable, that power ought to be preserved to the legislature, and be distributed by this Convention in the manner proposed. If the proposition of the gentleman from Albemarle is adopted, all that class of cases over which, by any existing law, the courts have jusisdiction, will be provided for by his amendment, and the legislature will not hereafter have any power to legislate upon these particular subjects, unless they think it proper hereafter to repeal the laws vesting this particular jurisdiction in the courts. That is the very reason why I would sustain the proposition of the gentleman from Albemarle.

Now, it may be—none of us can undertake to say it will not be the case—that in some of these identical instances, in which it is proposed to vest jurisdiction solemnly in the courts of the country, it will be necessary to require, absolutely by constitutional provision, that the legislature shall divest itself of jurisdiction where abuses may arise in the courts. Now suppose any abuse should arise in the courts. The legislature, under this provision of the constitution, have vested the power where the constitution requires it should be vested. The legislature itself can never exercise the least control over it. I think it is better that the provision should stand, that in all cases where the legislature has provided that the courts shall have jurisdiction in special cases, the legislature shall not act in those particular cases, so long as that jurisdiction remains in the courts, but still to leave it in the power of the legislature at any time hereafter, whenever, in the judgment of the legislature, it shall become necessary to withdraw jurisdiction from the courts in any particular or specified cases.

The gentleman from Wheeling (Mr. JACOB) has correctly said, that we cannot see all the causes of special legislation which may arise. We are not making a constitution to last for two, ten, or fifteen years, but, in all probability, for half a century. It would be better to leave the hands of the legislature—the supreme law-making power—untied, so far as that matter is concerned, only to limit and restrain that authority in cases where they have thought it proper to depart from the rule, leaving it with the courts to restrain the power whenever the interests of the country suggest that it is proper to do so. For these reasons I shall sustain the proposition of the gentleman from Albemarle, and vote to strike out the proposition which has been reported by the Legislative Committe.

Mr. GOODE. I beg leave to say, that I do not imagine the criticisms of the gentleman from Washington (Mr. TRIGG) to be well founded—that the legislature will be constrained to confer general jurisdiction over these subjects upon the courts which may be instituted in the State. Certainly such is not the design of the Legislative Committee. It was designed by the committee to authorize the legislature to designate the court by whom the jurisdiction should be exercised. I do not think that the criticism which he submitted upon the resolution is sustainable. In respect to the other question—the whole matter between the gentleman from Washington (Mr. TRIGG) and the Legislative Committee—is this: The Legislative Committee deem it important to take from the legislature jurisdiction ever various subjects which they believed have heretofore had a tendency to lengthen the sessions of the general assembly. They believed, moreover, that the legislature was not qualified to exercise a discreet and wise jurisdiction upon this subject. For these various reasons I think, therefore, it is necessary to pass the clause reported by the Legislative Committee, and reject the proposition of the gentleman from Albemarle.

Mr. WOOLFOLK. My friend from Wheeling seems to suppose that there are a great many gentlemen on this floor who imagine that after this body is dead, there will be no wisdom left in this country. Now, if we were to judge of individuals by their actions—and ideas may be communicated infinitely better by action than by words—one would suppose that some ten, fifteen or twenty gentlemen here regard this as a very stupid body, for they think it absolutely necessary to make speech after speech, and argue hour after hour in order to hammer into the heads of the dull geniuses on this floor their own views and arguments. [Laughter.]

Now, I differ with the gentleman from Wheeling in relation to that matter. I think there is a pretty smart quantum of intelligence here, but a great many individuals seem to suppose that they are the first men in this Convention. [Laughter.]

I shall vote against striking out this section, and for this plain reason: I am for measuring out even-handed justice to all—high or low, rich or poor. I have been a member of the legislature for same time, and I have seen applications for divorces rejected here in cases where the judges had refused to grant divorces from bed and board. I know that two distinguished men in this States were granted divorces, and in both of these cases there was not sufficient ground to grant divorces from bed and board; yet, when applications came before the legislature from the humble and the poor, where divorces, in my humble judgment, ought to have been granted, they were rejected.

If you throw this matter before the courts, you will find that the courts will decide alike in all cases, rich or poor, high or low. Bring it before the legislature, and while rich families get divorces on mere pretexts, the humble, and even the middle class are refused redress. I shall therefore vote against striking out this provision, because I want to place this matter on some permanent and lasting foundation, and not leave it to the changeable feelings of the members of the legislature.

Mr. LYONS. I shall vote against the motion to strike out the section reported from the legislative committee with a view to insert the amendment of the gentleman from Albermarle, because the amendment of the gentleman from Albermarle does not take away from the legislature the power to grant divorces. They may, by that amendment, confer the power upon the courts or they may not. Now, in my humble judgment, the legislature is not only the very worst tribunal to grant divorces, but they have no lawful right to grant them. The supreme court of Kentucky have settled that question most correctly by deciding, as they have done, that a law of the legislature granting a divorce *a vinculo matrimonii* was illegal and void. You provide by a preceding section that the legislature shall pass no law impairing the obligation of contracts. They cannot by special legislation divorce me from my horse or my cow, but you say that they may divorce me from my wife.

Mr. JACOB. I desire to understand this subject, and I would ask the gentleman one question. Can the legislature authorize the courts to violate that provision which says you shall not impair the obligation of contracts?

Mr. LYONS. Not at all, but it is no violation of that principle as the common law now stands. If the legislature provides what causes shall be causes for divorce, then when a marriage takes place afterwards, the parties enter upon the marriage contract according to the law existing at the time the contract is made, and it is decided accordingly. There is, therefore, no violation of this principle when it has been decided by general legislation for what causes divorces shall be granted. But when you come before the legislature it is a very different case. A man marries a lady possessing personal estate worth $100,000, becoming by marriage the owner of that estate. The wife comes before the legislature for a divorce. She is perhaps forced to be an applicant for a divorce by reason of ill treatment. You divorce her from her husband, and yet you cannot take from the husband one dollar of the $100,000 worth of property he has acquired by his wife; you cannot take from him a horse or a slave; you cannot impair or set aside or cancel the contract respecting the property which has been formed by the marriage, and yet you undertake say that the legislature has power to set aside the higher contract between man and wife. If the legislature is the proper tribunal to grant divorces they ought undoubtedly to have the power of exercising it equitably and justly, and of saying whether the whole property shall be restored to the wife, and if not the whole, how much of it, and yet what court is there that would obey the law or execute the sentence of the legislature in respect to the property when it undertook to interfere with the rights of property. Provide before hand by general legislation in what cases divorces shall be granted, as the common law in certain cases does now, and then when the parties come into a court of justice the legislature will have prescribed the terms on which a divorce shall be granted, as they have decided on what terms a separation or divorce *ab mensa et thoro* shall be granted, and the court will have to decide whether the whole property shall be returned or how much of it.

I am very happy in being able to say that during my service in the legislature I never did vote for a divorce.

I am very happy in being able to say that during the period when I had the honor of a a seat on the floor of the senate there never was a divorce bill passed, because there were half a dozen of us combined and determined to oppose them. I never could vote for a divorce bill, because I never did believe that the legislature had power to divorce a man from his wife, or a wife from her husband when they have not the power to divorce me from the horse or the cow of which I am the lawful owner. I shall not go into the other aspect of this question of granting divorces. Suffice it to say that, in my opinion, the worst thing for society that could happen would be for it to be understood that divorces were to be easily or lightly obtained. If obtained at all, they should be obtained from the courts under prescriptions of law applicable to all cases, and not, as has been said by the gentleman from Orange, the offspring of passion and prejudice in particular cases. I shall go against the motion to strike out, because I am for making this act mandatory upon the legislature.

The question being then taken the amendment of Mr. SOUTHALL was rejected.

Mr. TAYLOR. I propose to amend the section by adding after the words "legal disabilities" in the fourth line, these words, "and no divorce shall ever be granted *a vinculo motrimon i* except in cases where the marriage contract was void in its inception."

Loud cries of no, no, from all sides.

Mr. TAYLOR. I am sorry to find such a manifestation of opposition to the submission of a proposition of this sort. I was aware that the prevailing sentiment of this State was in favor of the exercise of this power. Every gentleman must of course act upon his own opinion of the expediency of the exercise of such a power. Having an opportunity publicly to express my views I did not feel content to let the opportunity pass of offering this proposition. If it is rejected the responsibility is not upon me, but upon others. I do not wish to trouble this committee with an argument upon a subject which affords so fruitful a theme for declamation and argument. The time has passed by when it is proper to detain the committee with argument, but I will only remark that, in my opinion, if there is one terrible curse greater than another with which a community can be visited, it is to impair the reverence for the sacredness of this tie, and to destroy, in the inception of the contract, the belief of its inviolability. If the proposition which I submit has no other vote than the vote of the humble mover, I should be proud to have had the opportunity of expressing my opinion of the impolicy and impropriety of the violation, as I believe, of the law of God, in this practice which has grown up in this State within the last ten or fifteen years, of the legislature assuming the fatal power of dissolving this contract which God has sanctioned.

The question was then taken on the amendment, and on a division there were ayes 8, noes not counted.

So the amendment was not agreed to.

Mr. CAMDEN. I have had some doubts and difficulties in regard to the latter clause of this section. I do not understand it as my friends from Spottsylvania (Mr. CONWAY) and Ohio (Mr. JACOB,) do. I understand that part of the section down to the first word, "case," in the fifth line, as applying alone to cases of divorces, changing the names of persons, and the sales of infants' estates, etc. But I understand that the words which follows, "nor in any other case over which the laws may have conferred jurisdiction on the courts or other tribunals," to be in reference to other subjects than the three I have named. But my friends from Spottsylvania and Ohio think that they have reference to these same subjects. In the committee when the proposition was made to amend this section by the addition of these words, I had difficulties in ascertaining the extent and scope of them. I still have that difficulty, and if gentlemen in this committee can relieve me upon this point I shall be under obligation to them.

I regard this a very important provision, one to which I would call the serious attention of this committee. My understanding of this section, as it now stands, is that the first clause prescribes the action of the legislature upon these three subjects. But I confess I do not understand what will be embraced by the latter clause I have just read. Now, I consider this section down to the word "case," in the fifth line, as full and complete in relation to the three subjects—divorces, changing of names, and sales of estates, etc. The words that follow, I confess I have been unable to fix in my own mind the ground that they may be construed to cover. What are we to understand by the words, "nor in any other case over which the laws may have conferred jurisdiction on the courts or other tribunals?" The words were introduced I think at the instance of my friend from Patrick, (Mr. STUART,) not now in his seat. If any other gentleman can tell me to what extent or how these words will be limited, I shall be very much gratified indeed. Now, I am for restricting the legislature in such cases as I think proper and judicious when I understand them. When I am called upon to vote a restriction upon the legislature I wish to understand specifically what it is that I am to vote for. I must say that, notwithstanding I have given to these words that reflection and consideration that my feeble abilities will enable me to bestow, I have yet been unable to ascertain in my own mind, what subjects they embraced. And I think it is injudicious and improper in restricting the hands of the legislature to use words or provisions where the true meaning will be left in doubt and uncertainty. I think that all our restrictions upon legislative power should be plain, simple, definite and easily understood. I, myself, however do not understand these words, and I will, therefore, with a view of bringing the subject to the attention of the committee, move to strike out the latter clause of this section, as I have read it.

Mr. LYONS. I would suggest to my friend from Harrison, (Mr. CAMDEN,) that the propriety of retaining these words will just depend, in his opinion, upon whether, in his mind, it is wise and proper that the legislature shall, in any case, exercise special jurisdiction, that is, pass a special law, when there is a general law, authorizing the courts to act upon the same subject. This clause might be stricken out and then leave the section perfect in regard to the three subjects named. But imagine a case, whatever you please, and suppose that the legislature has by law authorized the court to exercise jurisdiction over that subject, or that by force of the common law the court has jurisdiction over that subject. Then the question is whether you will give to the legislature the power by special legislation to act upon that same subject. Now, I confess that it seems to be at war with our whole system to say that when the courts have jurisdiction over a subject, the legislature shall also have jurisdiction to act by special legislation upon that same subject. But entertaining that opinion it would seem to me to be right to retain this provision. There ought to be either in this section or elsewhere a provision that declares that whenever the courts can grant relief, the legislature ought not to have the power to take up the case by special law and legislate upon it.

Mr. BROWN. I desire to put a case to my friend from Richmond, (Mr. LYONS,) who is a good lawyer. Suppose that a man was indicted for some high misdemeanor over which the courts had jurisdiction, and by means of a conspiracy against him witnesses were brought in who should commit perjury and procure his conviction, and a fine of $1,000 be laid upon him. Suppose that the defendant was unable at that time to ask and obtain a new trial to show his innocence. But, yet, in the course of some ten days, two weeks or a month afterwards he should be able to show the whole conspiracy. Ought not the legislature to have the power to grant relief? Can the courts give relief in a case like that?

Mr. LYONS. In regard to the case supposed I should have no hesitation in saying that innumerable cases might be found in which the pardoning power may be exercised to grant all the relief that could be granted anywhere.

Mr. BROWN. Would you give to the governor the power to remit a fine?

Mr. LYONS. I would certainly never give to the legislature the power to remit a fine. That is one of the very last things upon which I think they ought to be allowed to legislate. There is always a pre-disposition in any body to remit a fine, and the legislature is the worst body for that. Now, if the conspiracy be not known to the parties at the time of the trial, but is discovered and made known to the governor afterwards, the pardoning power can be exercised as it has been repeatedly exercised before in our own country and in England upon precisely the same grounds.

Mr. DAVIS. I would inquire if the words "or other tribunal" have been stricken out?

The CHAIR. They have not been stricken out in this latter clause.

Mr. DAVIS. I would also inquire if it would be in order now to move an amendment to the section?

The CHAIR. Not to the section, for there is already an amendment pending to that. It would be in order to move an amendment to the amendment.

Mr. DAVIS. That would not answer my purpose. I have an amendment however, which at the proper time, if an opportunity occurs, I will offer, and I will now read it, for perhaps some of the members of this committee may concur with me. I shall move to add to 13th section these words, "until after application has been made to, and relief refused by, such courts or other tribunals." I think, sir, that a little reflection on the part of the members of the Committee will convince them that the entire subject ought not to be transferred from the legislature to the courts. I think, according to the common law, the right ought to be preserved to the people in all cases of petitioning that branch of the government which confers the whole power; and while it would be proper to transfer many ordinary cases which have heretofore been acted upon by the legislature, to the courts, yet, I think in justice to the people, we ought to preserve the right of petition to the legislature in cases where satisfaction has not been given in the courts. It is an individual right granted by the common law—a right to appeal by petition to the legislature for redress. I would not, however, give the legislature the power to grant divorces, for the reason which the celebrated General Blackburn often stated. I remember an anecdote which that gentleman related in his speeches in opposition to divorces. It was this: A bill was once introduced into the Virginia legislature for a divorce of a man who lived in a distant part of the State. It had, I think passed the house of delegates, and was on the point of being made a law in the senate when it was discovered to be a hoax. The gentleman proposed to be divorced received tidings of what was going on in the Virginia legislature and immediately hurried off to the capitol and arrived here just in time to prevent the completion of the act which would have severed him from his "better half," with whom he had never a word of difficulty, but, on the contrary had ever been living upon terms of harmony and love. [Laughter.] I would not give the legislature jurisdiction over divorces in any case. I would make it the duty of the legislature to confer this power upon the courts, but I would give an appeal in the nature of a petition, if the parties thought proper, to the legislature, because I think the right of the people to appeal should be preserved in all cases affecting personal rights.

I offer the amendment which I have read, and ask that it may come in after the words "or other tribunals." The object of the amendment, as I have said, is to preserve to the people that great and sacred right of petition to the legislature in all cases.

Mr. GOODE. I trust the amendment will not prevail. I think, upon a little reflection, the gentleman will perceive that if it prevails it can alone reach three classes of cases—divorces, the changing of names, and the sale of infants' estates. It will refer to no other subject of special legislation incorporated in the constitution, and no matter how great inconvenience it may occasion, no matter how legislation may be reduced, there will be no clause in the constitution requiring the legislature to transfer this jurisdiction upon the courts or other tribunals of the State. There would be no provision even upon precinct elections, and there would be no provisions upon various other topics which present themselves to gentlemen upon a moment's reflection.

Mr. CAMDEN. Is it understood that the provision will extend to precinct elections?

Mr. GOODE. I mentioned these among other things to show the inconvenience which would result from the adoption of this embarrassing proposition in the constitution. If gentlemen will adopt this provision, I want them first to understand the consequences which must necessarily result from its adoption. I wish them to understand what is to be the result of the provision before it passes into a law. The legislature could surely be trusted with the execution of a provision which is to curtail its own power and authority whenever it may become proper in its judgment to do so. For this reason I think the committee should retain the words as they are in the original section, and if they shall from experience find it for the public interest to confide it to some other tribunal, I hope it will be the pleasure of the committee to grant such a power. Let it not exercise a general jurisdiction over these cases, but let it be provided with a discretionary power of taking such steps as shall be necessary for the proper transfer of that power, as it may think necessary and proper.

Mr JACOB. I rise merely for the purpose of inquiring of the chairman of the committee on the legislative department, (Mr. GOODE,) what interpretation is to be given to these words, "but shall not, by special legislation, grant relief in such case, nor in any other case, over which the laws may have conferred jurisdiction on the courts or other tribunals?" Is it not intended to prohibit the legislature from granting relief in all cases of divorce, or changing of name, or in the sale of infants' estates, whatsoever?

Mr. GOODE. I so understand it. The object is to confer the power of giving relief in such cases upon the courts and other tribunals.

Mr. CAMDEN. I think the remarks which have been made reach the object I had in view in making the motion which I made upon this subject. My only object in making that motion was to satisfy my own mind upon that subject. I have had much difficulty about it, and I am free to say that the remarks which have been made in this connection have done much to bring my mind to a satisfactory conclusion. I wished to know the scope to which these words would extend. I supposed that a proper construction of them means that whenever the legislature confers upon the courts jurisdiction to adjudicate upon particular subjects, the legislature is not by any special law to legislate in such cases, or to give relief in any shape. If this is the construction to be given to this clause of the section, I can see no particular objection to it. But there is this difficulty about it; we all know that the term jurisdiction is a pretty extensive one, that it covers a good deal of ground, and how it may be construed it is difficult to form any very correct or decided opinion. Upon the whole, I now feel indifferent in regard to retaining that clause of the section, and under these circumstances I will withdraw my amendment. I have accomplished the object I had in view.

Mr. TAYLOR. I move to insert the word "any" in the fifth line, after the word "in," so as to make it read "grant relief in *any* such case."

Mr. GOODE. This is a typographical error which I think was not in the manuscript. I presume there can be no objection to the insertion of the word "any," which will be in effect only correcting a typographical error.

Mr. JANNEY. I desire to make a suggestion to my friend from Norfolk, not only in reference to this particular question, but others of like character. And it is that as this is a numerous body, and a very expensive one, and as there will be an absolute necessity to refer this work to a revisory committee, by whom it will undergo a most rigid scrutiny, I hope that all of us will refrain from proposing amendment which are merely verbal. It will save us a great deal of time, and the work will be better done.

Mr. TAYLOR. I think the suggestion a very wise one. If I had supposed when I proposed the amendment that gentlemen would have made any objection, I would not have proposed it. I had supposed that the necessity for it was so obvious that none would be made. I have no objection to withdrawing it.

The amendment was accordingly withdrawn.

Mr. HUNTER. I will move this amendment to come in at the end of the section: "Nor shall the general assembly have power to pass any act granting any special charter or corporate powers, except for municipal purposes, and for purposes of banking and internal improvement, but corporations and associations may be formed in all proper cases under general laws."

Mr. DAVIS. I hope my friend from Jefferson will withdraw the amendment which he offers for the present. I think the one I have intimated is more germane to the immediate subject under consideration than his. I propose to offer these words as an amendment at the end of the section, so that it shall read: "But shall not, by special legislation, grant relief in such case, nor in any other case over which the laws may have conferred jurisdiction on the courts or other tribunals, until after application has been made for relief and refused by such courts or other tribunals." The amendment which I offer, the chair will perceive, is immediately connected with that branch of the subject. The gentleman's amendment will come in with more propriety after mine, if it should be the pleasure of the committee to adopt it.

Mr. HUNTER. I perceive the amendment which I offer will come in more properly after that amendment, and, with the leave of the committee, I will withdraw mine for the present.

Mr. GOODE. I wish simply to remark that according to my apprehension the effect of that amendment will be to resolve the legislature into a high court of appeal from the decisions of all the courts in the Commonwealth. Every case in which the party should become dissatisfied with the judgment of the courts would be the foundation for a petition to the legislature. I would respectfully suggest to my friend from Richmond, that the provision which we are now endeavoring to engraft upon the constitution does not abridge the right of petition at all. It does not impair the right of the party to petition the legislature, but would nevertheless furnish the legislature with a reason for declining to grant relief. The right of petition would be unimpaired, but the right of the legislature would be impaired. I hope he will withdraw the amendment.

Mr. DAVIS. I have every disposition to oblige my friend from Mecklenburg. I have no disposition whatever to embarrass the proceedings of the committee upon this subject; but it appears to me, with much deference to the opinion of the gentleman, to be necessary in order to preserve the rights of the people, that this privilege of the people in the last resort, of applying to the legislature in such cases in which individuals may conceive themselves aggrieved by the court in regard to their personal rights—rights of the most delicate and momentous character—should be preserved to them. Now, I think the practical operation will be this: that in almost every case in which the parties have a right to succeed in divorce they will succeed before the court, but yet if there should be some peculiar cases, some peculiar hardships, especially so regarded by the parties themselves, they may be considered a grievance, and this great and sacred right of petition in relation thereto should be preserved and not abridged constitutionally. The cases, I presume, would be rare in which an application would be made to the legislature after refusal of relief by the courts. But, I repeat again, that there may be cases, there probably will be cases, in which the rights of the parties might be considered as abridged unless this power of petition to the legislature be preserved to them. I think it is impolitic to abridge this right of petition. I think it should be preserved to the people in every case. I can hardly imagine a case in which the right of petition to the legislature should be forbidden. I think it is a part of our very system—a part of the essence of our republican institutions—that the citizen shall have a right to appeal to the legislative branch of the government, which represents the sovereignty of the people.

Mr. KENNEY. I would ask my friend from the city of Richmond whether these cases do not stand on the same ground as any other adjudicated cases? If the sacred right of appeal is to be preserved in this adjudicated case, why should it not in all other adjudicated cases? Will not the parties that are provided for in these cases have the same right of reaching the authority of an appellate court that they would have in any other adjucated case? If you apply the sacred rule of petition to one, you may apply it to all.

Mr. DAVIS. In answer to my friend I would say that I would not allow an appeal to the legislature in cases simply of *meum* and *tuum*. I would not allow a departure from the regular course of proceeding in the judicial department in such cases. But I would allow an appeal to an individual where his personal rights are concerned as contra-distinguished from his property rights. I would allow a man to appeal to the legislature in cases of murder. I would allow it in all cases in which his personal rights were concerned. And it is in regard to these rights only that I have any desire to see such an appeal preserved. I would preserve the right of petition in such cases as a last resort. I hope the gentleman from Rockingham perceives the distinction.

The question being then taken, Mr. DAVIS's amendment was rejected.

Mr. HUNTER. I have carefully examined my collection of documents to find, if I could, a more appropriate place for the amendment which I proposed to offer to the committee. The chairman of the legislative committee has just shown me a document which has never been in my possession before, and which furnishes a more appropriate place, or rather covers the same ground. I, therefore, will not offer it.

LOTTERIES.

Mr. WALLACE. Before we proceed to the fourteenth section I wish to offer the following amendment:

"No lottery shall hereafter be authorized by law, and the buying, selling or transferring of tickets or chances in any lottery not now authorized by a law of this State shall be prohibited."

I offer it as an independent section after the thirteenth section. I will very briefly state the reasons why I offer this provision as a section of the Constitution. It may be asked, by a great many, why not prohibit faro-banks, horse-racing, or any other species of gambling? If we look to the past history of our State, we will find that faro, and other games of like character, have been made at one time by law, felony, and are now regarded as the greatest misdemeanors known to the law. Why have not the lottery schemes and the vending of lottery tickets been visited by similar legislative disapprobation? It is gambling of the worst character, and yet it has been tolerated because the State, by its license system, has been a heavy beneficiary! The State derives in the city of Richmond alone $8,000 from lottery licenses, and it derives a large amount from them also in other towns and cities of this Commonwealth. The legislature, pressed for money, has not hesitated to derive a profit from this species of legalized gambling, thereby assisting in demoralizing its own citizens. I think this legislation extremely disgraceful to the State. It may be said, however, that this state of things will cease. I have no faith in such a result, and my reason is this: The State has now arrived at a point when taxation must necessarily be heavily increased, and the legislature will look around them to every source from which they may derive income to supply the wants of the Commonwealth. And the members of the legislature will not pass by subjects of this character and vote a direct tax upon their constituents. Who are the people that are now demoralized by the action of the State? In the community in which I live many respectable gentlemen have come to me and urged the necessity of a provision of this kind. Our slave population are very much contaminated by this species of gambling, and they will carry all they can get, either by labor or pilfering, to lottery offices to expend for tickets in the useless hope of acquiring a little money. These lottery offices are managed now so secretly that the public know nothing about their operations. You will find, I fear, that some of the most moral men in the community are often tempted, and buy tickets because of the veil of secrecy which is thrown around the operations of these lottery offices. There is no species of gambling so demoralizing as this, in my judgment; faro-bank dealing is fair compared to it. And yet this great Commonwealth of Virginia has been year after year deriving a revenue from this source, and participating in the great cheat by which her citizens have been swindled and their morals corrupted. I do sincerely trust that the legislature may be hereafter inhibited from carrying on this matter any further. A provision of the kind I have offered is necessary to check the evil. If you do not provide such a check as this the temptation to increase the revenue is so great that the legislature will refuse to suppress lotteries. I hope, in deference to the views of a large number of the people of this Commonwealth—I might say of a large majority—that however disinclined this Convention may be to put a restriction upon the legislature in the discharge of its general duties, they will make this great grievance an exception, and will inhibit that body not only from chartering lotteries, but will inhibit in all future times the buying or selling of lottery tickets authorized by the laws of other States. This subject has met the attention of other Conventions in other States, and provisions similar in character to the one I have offered have been incorporated in their constitutions. It is positively necessary that such a provision should be inserted in our constitution. With these brief remarks I submit the question to the committee, trusting that they will see the propriety and necessity of inserting such a provision in the Constitution.

The question was then taken upon Mr. WALLACE's amendment, and it was agreed to.

Mr. JACOB. I desire to make a suggestion to the chairman of the committee. The first clause of this section provides that "the legislature shall grant certain jurisdiction to the courts." Now, suppose the legislature in attempting to exercise the power thus given, should fail to carry out fully this provision. As it now stands, I understand that if the legislature should fail to obey this injunction, there would be no relief in cases of divorce, in the matter of changing names, and the selling of infants' estates. Therefore I think it would be better to alter the commencement of the clause, and make it read that the "legislature shall not by special legislation grant relief in any case over which the laws may have conferred jurisdiction upon the courts or other tribunals." Then if the legislature shall refuse to exercise the power, the individuals affected will not be without relief. As the clause now stands, if the legislature shall refuse to obey the injunction, I think the class of individuals referred to will be without relief. If the chairman of the committee declines to accede to the suggestion, I shall not press my amendment.

Mr. GOODE. I am sorry to decline the suggestion of my friend from Wheeling, (Mr. JACOB,) but I cannot admit the supposition that the legislature will be derelict in the performance of the duty imposed upon them.

FORMATION OF NEW COUNTIES

There being no other amendments offered to the 13th section, the 14th section was read, as follows:

"No new county shall be formed with an area less than six hundred square miles. In the formation of new counties no existing county shall be reduced below such area, nor shall any existing county having a population less than 6000 white inhabitants be deprived of more than one-fifth of its population."

Mr. TAYLOR. I am requested to offer an amendment to this section in these words: After the word "miles," insert "unless the territory proposed to be formed into a new county shall contain a population of 8000, and shall leave the county or counties out of which it is proposed to be formed with a population of 8000." The committee will perceive that an amendment of this sort may be very important to the eastern counties. It may be expedient to divide some counties, for instance, the counties of Accomac and Loudoun, which are entitled to two representatives so as to give to each section of the county one representative. In the county in which I live there has been a proposition made to divide the county by the southern branch of the river. Applications for a division of that and the formation of new counties are very rare at this time. I know there is one case which was pending before the legislature—the division of the county of Accomac. Now, that county, I presume, does not contain 600 square miles, and yet it is in length some 40 or 50 miles. There have been applications frequently before the legislature for the division of that county; and I presume there are some good reasons why it should be divided. If this clause of the section be adopted, it will effectually prevent that county from being divided, no matter what may be the reasons for the division. I think the limitation proposed of a population of 8000 is a just one, and will be in conformity with the spirit of the section itself. I do not think that we should adopt any constitutional provision by which we shall deprive the legislature of the power of doing justice to the east and the west.

Mr. SNOWDEN. My impression is that this is a subject clearly for legislative discretion. I would prefer myself to strike out the whole section.

The CHAIR. It is not in order now to strike out the whole section, while there is amendment pending.

Mr. PRICE. I would suggest to my friend from Norfolk, (Mr. TAYLOR,) in order to test the sense of the committee, that he withdraw his amendment to see whether the committee will strike out the section. I am for striking out the whole.

Mr. TAYLOR. I will withdraw my amendment.

Mr. SNOWDEN. Then I would move to strike out the entire section.

Mr. GOODE. I regret that this motion is made at this time. When this subject was under consideration originally by the legislative committee, it was one to which my attention was but slightly directed, and I had no feeling in regard to it. It was brought forward by a gentleman—if I recollect aright—not now in his seat, but absent from the city. I mean the gentleman from Barbour, (Mr. CARLILE.) It was advocated by other western gentlemen—

Mr. FINNEY. Will the gentleman allow me to interrupt him? I am aware that the gentleman from Barbour, (Mr. CARLILE,) introduced that proposition in the legislative committee, but it was done for the purpose of meeting the question in his own county. The last legislature, I believe, divided his county, and in conversing with me in regard to this subject he said he cared nothing about this question now.

Mr. GOODE. I know that this subject has been agitated by the gentleman from Barbour, (Mr. CARLILE,) and the gentleman from Giles, (Mr. PENDLETON,) both western men. And there have been other gentlemen from the west who have agitated this subject. My friend from Norfolk, (Mr. TAYLOR,) is under the impression that there is no interest in the east upon this subject; and he says that there has been but one application for years, and that is from the county of Accomac. I believe there have been various other counties in which this subject has been agitated within the last ten years, and earnestly agitated. Since allusion has been made to the matter, I will say that it has been agitated in my own county of Mecklenburg. I believe it has been happily settled there by an overwhelming majority of the people against division. But there is great agitation upon the subject in the counties of Loudoun and Fauquier, and all this goes to show that there is a prevailing interest on the subject in the State. Although I do not desire to stand up particularly as the champion of this clause in the report, yet I do not wish that this subject should be acted upon in the absence of the gentlemen from those counties who evince a good deal of interest in this subject. The two members from the county of Fauquier are absent from their seats at this time. As this report will undoubtedly occupy the attention of this committee for several days to come, I would respectfully submit, whether it would not be advisable to postpone the consideration of this subject until the absent members who take an interest in this subject shall have returned and resumed their seats.

Mr. PRICE. I would be very willing to extend any sort of courtesy to absent gentlemen, but if the provision is stricken out in the committee of the whole, I presume that all gentlemen will be here before the subject is finally acted on in the Convention. If, however, the gentleman insists on passing over the subject, I will yield the floor.

Mr. GOODE. I propose passing it by on account of the absence of members.

Loud cries of "no!" "no!"

The CHAIR. The gentleman from Alexandria having submitted his amendment, a motion to pass by the consideration of the subject is not now in order.

Mr. PRICE. I hope the section will be stricken out. I think we have secured very good effects by the formation of new counties. I do not know in the whole western section of the State, where new counties have been formed more generally than in the east, of a new county that has been formed where it ought not to have been. It has induced population and enterprize; it has carried courts where courts were unknown before, and the people have become familiar with the administration of public justice. That will be the effect here. I am satisfied that in every case where new counties have been formed, it has conferred real benefits and blessings upon the people.

Now, it may be supposed that too many counties will be formed from the west. I do not know whether there is any thing sectional in this question. I have no such feeling. But if there is any such feeling, I understand that the houses are to be divided, a majority in the Senate being accorded to the east, and in the House of Delegates to the west. If ever any sectional question should arise in relation to the formation of new counties—which I cannot conceive to be a sectional question at all—one house can check the other, and there can be no sort of danger. You say that no new county shall be formed in the western section of the State unless it contains an area of 600 square miles. Now, in very many instances that would operate very harshly. These things must be left to legislative discretion, and I would say here, once for all, that I came here as a delegate to revise the constitution, and in revising the constitution I supposed that we were to lay down great fundamental principles, to mark the exterior boundaries and define the landmarks of our free institutions. I did not suppose that we were coming here to revise the code, much less Jefferson's Manual, or any book of that sort. Why, do not gentlemen point out the inconveniences and grievances which have grown out of legislation on the subject of the formation of new counties. If there have been any, let gentlemen point them out. I do not know of any, and I have been as conversant perhaps with the subject of the formation of new counties in the west, as any gentleman here. I am pleased to learn that the question is settled in Mecklenburg, and so far as Greenbrier is concerned, I might almost utter an anathema