Speech of Hon. Freeman H. Morse of Bath Delivered in the House of Representatives, February 27th, 1856

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Delivered in the House of Representatives, Feb. 27th, 1856, against the Resoluer reported by the majority of the Committee to amend and construe the Constitution.

Mr. Speaker: I have no hope that any words or argument that may fall from me, or any one else, will change the decision to which a majority of this House has by some means been already brought. Unfortunately, most unfortunately, sir, when questions even of a grave and weighty character, touching the common interests of all parties alike, and the common interest of the whole State, are once brought into the vortex of party politics, men too often forget those common interests, lose their personal independence, and sink the man into the mere partisan. Every movement here indicates that this question has been settled elsewhere, and that I am to speak to a dumb majority, a majority that has thus far declined unsealing its lips in defense of this extraordinary measure. This discussion was commenced early this morning, the sun is now past the meridian, and will soon touch the western horizon, but no voice has yet broken its ominous silence in defence of the majority report and resolves. It is a subject which has received a large share of attention all over the State, and a fair and full discussion of it should not be shunned by the power that reigns in this Hall, be that the power of the caucus, or any other unseen, irresponsible, unofficial master. The scene which has been exhibited in many portions of the State during the last two months, has no parallel in our history. It affects the interests of every person who has business to be transacted in our courts, and makes a permanent settlement very desirable to all our people. We now have two sets of sheriffs, and two sets of registers of probate, both claiming under some color of authority to be the true and legal officers. In some instances the officers claiming power have been resisted by those holding possession, and a collision has taken place. Although the question must be finally determined by the judicial authority of the State, no steps have yet been taken to bring about so desirable a result. The Governor has the power, and the Council has the power, at any time to call upon the Judiciary for its decision and settlement of the whole question. Either branch of the Legislature has the same power, but all have failed to take any steps to that end. Why a legal and proper settlement is shunned, and force resorted to, is a question beyond the comprehension of those outside the coalition that rules here. We know that rumour with her thousand tongues has made some oracular utterances, proclaimed the Governor anxiously deliberating with his council about calling out the military power of the State to settle a judicial question, and place the recipients of his favor into office. Impossible as this may seem, yet it is without reasonable doubt, and at one time so sensitive and excitable had portions of the State become, that they could almost see in imagination our great Captain at the head of his martial hosts, with their armour glittering in the rays of the morning sun, and their banners flapping to the breeze, as he led them on with solemn tread, and the sound of trumpet, to the war upon the sheriffs and jailors. But happily, sir, we have escaped such a catastrophe. Military rule and martial law no longer haunt our dreams. Instead of the roar of artillery and the clank of arms, we have heard only the sharp click of burglar's tools in the hands of hungry sheriffs, removing locks and hinges from jail doors.

What remedy do you propose for this unprecedented state of things? How do you mean to restore the peace, quiet and confidence which your rash and head-strong executive has broken? By an appeal to the judiciary, the only mode known to our constitution and laws? No! you forget, even in this emergency, all interests but such as are of a partisan character, and give your plaint support to the author of the wrong. This question must go to the courts in some way for settlement at last. It can be permanently settled in no other way. Your resolves settle nothing. They have no legal, binding effect upon any body whatever, and may as well sleep upon the table, as to go upon the statute books. They are utterly useless, and I wish as harmless as useless.

The points at issue, sir, are these—we contend that the constitution was amended, and the appointing power taken away from the Governor before he entered upon the duties of his office, and that his appointments of sheriffs and registers of probate under the amended constitution are illegal
and void. On the other hand, it is contended that
the constitution cannot be amended, unless by
consent of the Legislature following the action of
the people, given by a declaratory resolve, or in
some other form. You, therefore, to protect your
executive and place your friends in office, have
delayed the presentation of these resolves for
about two months, until all the appointments and
confirmations had been made. The idea that the
appointing power has not been stricken out of the
constitution, because the people were not called
upon to vote on striking out and inserting, as
distinct questions, is relied on by some, and urged
as the strongest point in your case.

In support of the position that the concurrence
of the Legislature convened after the people have
given in their votes on the amendments, the com-
mitee from which these resolves were sent, say
their reports, "laissez faire, therefore, as only two
parties are recognized as active in the change of
the constitution, it seems to us, that to one
or both of these parties belongs the duty of as-
certaining and making known the fact that the
amendment proposed has received the approval of
a majority of the voters; and as by the nature of
the case, this cannot be done by the voters them-
selves, it follows that it must be done by the other
party viz: the two houses of the Legislature." Here
is the position taken by the Governor and
those who sustain him distinctly set forth, at least
as much so as any other position which the major-
ity of the committee attempt to sustain by their
report. That report is not characterized by clear
and decisive reasonings, but cautiously feels its
way to conclusions as if every step taken was
mistrusted, and as if fearful that its foundations
upon which it is raised would crumble and give
way before the structure could be completed—
Nevertheless, it is distinctly said by the committee,
that the duty of "ascertaining and making
known" what has been the action of the people,
"must be done" by this Legislature, as the "other
party" besides the people, required to amend the
constitution.

The judiciary committee also, in reference to the
"Police Court in the City of Portland," lend the
weight of their position and authority to this new
born heresy, that the consent of this Legislature is
necessary before the amendments can take effect.
In this respect, the committee say—
"As to the mode of appointing the judge, the
committee have provided for it by a simple ref-
ference to the Constitution. If the amendment
voted upon at the last election, providing that
judges of municipal and police courts shall be
elected by the people of their respective cities and
towns, shall be declared adopted, that amendment
will control this appointment at the next election.

Here, by the use of the language, "If the
amendments shall be declared adopted," a
doubt of their adoption is expressed, and of course the
power and probability of rejecting them clearly
implied. Now, sir, from whence do you derive
this power of rejecting or controlling amendments
to the Constitution, adopted by the people—this
claim of a neutrent action with them, and super-
vising their doings in such cases? To screen your
Governor, and bring his indiscreet and rash acts
within the pale of law, the power is necessary, ab-
solutely necessary, to you; but we should like to
see and know the source from whence it is attempt-
et to be drawn. You have no power except what
is given you by the constitution and laws made in
pursuance thereof. What provision of the consti-
tution confers, directly or indirectly, the power
claimed; or what provision of law demands any
action from this Legislature before the amend-
ments, which the people have adopted, can become
a part of the constitution? The only provision in
the constitution, which has any reference to the
subject of making amendments thereto, reads as
follows:

"The Legislature, whenever two thirds of both
branches shall deem it necessary, may propose
amendments to this constitution; and when any
amendments shall be so agreed upon a resolution
shall be passed and sent to the selectmen of the
several towns, and the assessors of the several
plantations, empowering and directing them to
notify the inhabitants of their respective towns
and plantations, in the manner prescribed by law,
at their next annual meetings in the month of
September, to give in their votes on the question
whether such amendment shall be made; and if it
shall appear that a majority of the inhabitants
voting on the question are in favor of such amend-
ment, it shall become a part of this constitution."

Here the Legislature which proposes amend-
ments, is made a necessary party, to a certain ex-
tent. It is to take the primary steps towards
procuring amendments—to propose the amend-
ments, provide for a return and count of the votes,
and how it "shall" be made to "appear" that the
people have adopted the amendments; and if the
Legislature proposing the amendment, deem a pro-
mulgation necessary, it may provide how the fact
that the amendments have been adopted shall be
made known. But can gentlemen see any power
here, or can they bring to light any law made in
pursuance of this article, that gives this Legisla-
ture—the Legislature following the action of the
people—the power to arrest and set aside amend-
ments adopted by them? or anything that requires
the consent or permission of this body, before the
amendments voted on last September, can become
a part of the constitution? You will observe, sir,
that the constitution goes into no particulars, ex-
cept to provide that the inhabitants shall be noti-
fied to vote in "the manner provided by law." It
does not direct to which department of the State
government the votes shall be returned, nor who
shall count them, or how it "shall appear." This
is left to be provided for by the Legislature. The
language of the constitution is simply, "if it shall
appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of the constitution." All the details necessary to provide for a return and count of the votes, and whatever may be thought proper to carry into effect this section of the tenth article must be provided for by the Legislature, and, of course, by the Legislature proposing the amendments. The Legislature next following the action of the people on the amendments, can make no such provision, and has no control over the subject except what may be given it by its predecessors; or such as would grow out of the necessity of the case, should its predecessors fail to provide for a count. The power claimed by this Legislature over the amendments cannot be derived from implication or construction. If the framers of the constitution had intended a legislative count, they would have so provided, in direct terms, as in the case of Governor. In the case of Governor, the constitution requires that the returns be forwarded to the Secretary of State's office, to be by the Secretary laid before the Legislature, by the two houses to be counted to ascertain whom the people have elected. When the intention was to confer a power of this kind on either branch of the government, it has been done in direct terms; but on the subject of returning and counting votes on constitutional amendments, our fundamental law is entirely silent. When the constitution conferred upon one legislature the power to propose amendments, and provide how they shall be voted on, it also conferred upon the same body by fair and necessary implication, as a part of the transaction, the power of providing to whom the town officers should make the returns, and who should count them, that it may appear how the people have voted on the amendments proposed. This seems too plain to be contradicted, and yet it is denied, and must be denied by the power which, by a strange combination of circumstances, happens to be in the ascendant here, or your Governor and his assumptions of power cannot be sustained.

But Mr. Speaker, the legislative history of our State has shed upon this subject the light of ample experience and precedent. The entire legislative history of the State, and of course all the precedents are combined against you. You have not the encouragement and light of a solitary example to lean upon, or to guide you in the new and untried path upon which you have entered. The history of the eight amendments proposed to and adopted by the people, is entirely against you. You have neither constitution, law, nor a single line in the history of those eight amendments already adopted, to support your claims to have the actual returns made by the town officers sent to the legislature—that your count is the only official count—that it is this legislature that must provide how it "shall appear" that the people have voted to amend, and that the amendments adopted by them, and so declared by the official count of the Governor and Council, as provided for by law, and the returns of that count by formal report to this body, cannot become a part of the constitution until you so declare.

The first amendment was submitted to the people by the legislature of 1834, and the resolve submitting it required that the actual returns of the town officers should be laid before the legislature, and by the two houses counted, instead of by the Governor and Council. This is in harmony with the position of the minority here, that the legislature submitting the question of amendment, must provide by whom the vote shall be counted, and how it shall be made to appear that the amendments were adopted by the people. The votes were counted by a joint committee which reported that a majority of votes were in favor of the amendments, the report was accepted, and this acceptance of the report of the committee was the only action taken by the legislature on the subject. No declaratory resolve was passed, and no formal promulgation of the fact was made by the legislature or any other branch of the government.

The second amendment was proposed by resolve of March 30th, 1837. They also required the votes to be laid before the legislature with a list of the same prepared by the Secretary of State. These returns were also referred to a committee. This committee varied from the course of the committee to which the returns on the preceding amendments were referred, and reported a declaratory resolve which commenced as follows:

"Resolved; The Senate and House of Representatives, believing, that whereas, it "appears" upon examination of the list of the votes laid before the legislature, in pursuance of a resolve passed March 30th, 1837, * * * "that a majority of the inhabitants voting upon the question, is in favor of said amendment:—It is therefore declared " &c., * * * "and that said amendment has become a part of the constitution."

You will observe sir, the language of this resolve, "whereas, it appears upon examination of the list of the votes," &c.—the list sent in by the Secretary of State. It does not appear that they examined the votes, but relied on the abstract sent in by the Secretary of State, and then declare, not that the amendment is hereby made a part of the constitution—they used no language by which we are left to infer that the men composing that Legislature supposed the resolve they were passing had the least legal influence on the adoption or completion of the amendment. They discarded the use of the present tense, and say "has become," &c., referring to a time antecedent to the time in which they were acting. When, in the opinion of that Legislature, the amendment became a part of the constitution, we are not informed; but are left to infer that, in their opinion, when the authorized and, of course, official count of the Secretary of
State was laid before the Legislature, the constitutional requirements was fulfilled, and that it then and thereby "appeared" that a majority of the people voting on the question were in favor of the amendment.

The third amendment adopted went through the same form as the first. The committee reported the action of the people on the amendment. The report was accepted, but no declaratory resolve was adopted, or promulgation of the fact made in any formal manner.

In 1841 the practice was somewhat changed, and more regularity and system introduced into the mode of counting and making "appear" what the action of the people had been. By the resolves submitting the fourth amendment, the returns, as usual, were to be made to the Secretary of State, but the Governor and Council were required to count the votes, and make return of their count to the next Legislature. And, say the resolves, "if a majority of votes are in favor of either of said amendments, it shall become a part of the constitution." The same duty has been required of the Governor and Council in almost, if not quite, precisely the same language by every resolve proposing amendments to the constitution since submitted to the people for their action. The Governor and Council counted the votes, and laid the result of their count before the legislature, as required by resolves of the previous legislature. As a matter of form, rather than a duty required to complete an unfinished act, the report of the Governor and Council, not the returns, was referred to the judiciary committee, consisting of Philip Eastman, John Otis, and J. A. Barnard, of the Senate, and Moses McDonald, Edwin Smith, William Paine, M. Weeks, H. B. Osgood, Isaac Reed, and Benjamin White, of the House. Here is quite an array of legal talent, and the committee was on the whole an able one. There was nothing in their position to blind their eyes, and warp their judgments—they were free from all political excitement, and did not feel the necessity of so performing their duty and framing their resolves as to sustain the partizan acts of a mulish executive. They met the case with impartial judgments, and no doubt sought what they believed to be a fair and true exposition of the constitution in reference to amendments, and of the resolves of the preceding year, proposing amendments. In a brief report ex nunc of what the people had done, they conclude in these words:

"Thus it appears, by said report of the council, that a majority of the inhabitants voting, "are in favor of the amendment proposed by said question, and that it became a part of the constitution of the State."

You will notice, sir, the language. The committee do not say that it appears by counting the votes, but "by said report of the council," and this report of the council was made in obedience to the resolves of the preceding year, proposing amendments, which shows that, in their opinion, the Legislature proposing amendments possessed the right of providing for the return and count.—But further, they use the word "became," the imperfect tense of the verb which refers to a fixed point of time, anterior to the time in which they were speaking. They did not believe, therefore, that it was by any act of theirs that the amendment became a part of the constitution; but must have considered that it was made to appear that the people had adopted the amendment by the count of the Governor and Council, and by the return thereof, return of their count, to the Legislature.

The resolve reported by the committee, and adopted by the Legislature, closes with the words:

"and said amendment has become a part of the constitution." Here the committee use that form of the past tense which refers to any point in past time, preceding the time in which they were acting. This is the first amendment adopted after the practice of requiring the Governor and Council to count the votes was introduced. The language used in that part of the resolve requiring the Governor and Council to count and make return to the Legislature has been used in every resolve since passed, proposing amendments to the constitution. In every 'declaratory resolve' proposing the fact that the constitution had been amended, the Legislature has spoken in the past tense, thus conceding the fact that the amendments had been adopted, and so made to appear before they undertook to promulgate the fact by a declaratory resolve. I state but one more example, the next in historical order, and that on the fifth amendment.

The resolves proposing the fifth amendment were approved March 13th, 1844. They, as before and since, required a count by the Governor and Council, and a return thereof to be made to the Legislature. This was done, and the report of the Council referred to the Judiciary Committee. This Committee was composed of the following gentlemen: William Frye, Henry Tallman, Moses Sherborne, on the part of the Senate, and William C. Allen, William Pitt Fessenden, William Paine, Erlebridge Gerry, Tyrone Hayden, Isaac Tyler, and Peter S. J. Talbot, on the part of the House. This committee, it must be conceded, without disparaging any other committee, was like that last named, of uncommon ability, and may well be supposed to have understood clearly what they were doing. This committee in its brief report says that "it appears by said report of the Council that the whole number of ballots legally and constitutionally returned, &c. "It thereby appearing that a majority of all the votes given in, and legally and constitutionally returned were in favor of the proposed amendment; and the proposed amendment having thereby become a part of the constitution of the State, your committee ask leave to submit the following accompanying resolve."

Now, Sir, remember the language of the consti-
nination, "if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of this constitution." Now, in the opinion of this able committee, having in its number some of the best legal talent in the State, was the fact that "a majority of the inhabitants voting on the question were in favor of the amendment," made to appear? Surely by no resolve or action of the's. They say "it appears by said report of the Council." "It thereby appearing" "having thereby become a part of the constitution." There is no ambiguity in this. It is clear enough as to the manner and time of the change. The resolve referred by the committee, closes in these words, "and said amendment has become a part of the constitution of this State." It will be observed that the very worthy chairman, whose name is appended to the majority report, was also a member of the committee which made the report and resolve on the fifth amendment. We have no evidence that Mr. Hayden was opposed to the conclusions arrived at by the committee of that year. It does not appear from the journals, or from any other source, that the committee were not unanimous in their report—that there was any disagreement as to the manner and time of the appearance of the fact that the constitution had been amended. The ground upon which he stood then, is in complete and perfect opposition to that on which he stands to-day. Then he thought the count of the Governor and Council a proper requirement, and that the fact that a majority of the people had voted in favor of the amendment, was made to appear by their official count, and without a promulgation of the fact by the legislature. Now he nullifies, with the "powers that be" that the Governor and Council have no right to count, and that their count should go for nothing, even if required to perform the duty by the previous legislature, and that the constitution cannot be amended without a declaratory resolve. Why this repudiation of previously adopted and gravely announced opinions. It appears to have grown out of the necessity of the case, and the desire and determination to sustain, by every legislative expedient, the rash and unconstitutional acts of a stubborn and wilful executive. Surely, sir, we have cause to dread a party tyranny that can make so honest-minded and independent a gentleman bow so readily to its mandates.

I will not trespass upon your patience by going over the history of the other three amendments. The manner in which the votes on the amendments were returned and counted, and the fact that the amendments had been adopted by the people, and made to appear by the official count of the Governor and Council, promulgated by the legislature, was the same as in the cases just cited. You have not a solitary example to sustain you in the rash and excessively partizan course you are pursuing. If you say the legislature of last year, in the resolves proposing these amendments, required a declaratory resolve from this legislature, our answer is, first, that they had no reason to suppose that for more formal and party objects, so radical and wide a departure from established, convenient and safe usage, would for a moment be tolerated by any party having the least claim to conservatism or patriotic motive. We say secondly, that the resolve of last year should operate as a law directing how an ascertained fact should be promulgated by this legislature, and also that we were required to declare, not that the amendments are hereby adopted, but that they have been adopted. The sole object in passing this part of the resolve, was to fix a time when the first elections should take place under the amended constitution. Here is the paragraph, and it fully explains itself:

"And in all cases of elections provided for in this resolve, the first elections shall take place on the days and times herein prescribed, occurring next after the amendment providing for such elections shall have been declared by the legislature to have been adopted as a part of the constitution."

The article in the Massachusetts constitution providing for amendment, is substantially the same as that in ours, and there the legislature proposing amendments, provides for the return and count by the Governor and Council, and for a proclamation of the result by the Governor and Council. No declaratory resolve is there thought necessary, and no attempt is there made to assume the power of giving a legislative sanction to the doings of the people.

I think I have shown clearly enough that a proper conservatism, a just regard for the established rights of the Judicial department, the constitution itself, and every act of the Legislature under it in reference to amendments are united against you, and call loudly for protection against the blow you are about to strike. When this administration first entered upon its duties, it did not profess to have so herculean a task upon its hands. It then modestly claimed to be commissioned by the people only to overthrow and set aside the leading acts and resolves of the last Legislature. But your ambition for pulling down has grown and taken a wider range of late. Instead of limiting yourselves to the annulling the doings of one brief year, the work of a single Legislature, you have braced yourselves to the overthrow of the work of a whole generation of men, at least as wise and patriotic as yourselves. You are not satisfied with disregarding and treating with contempt the constitutional and proper acts of the Legislature of last year on this subject, but the carefully prepared precedents and usages of over twenty years must fall and disappear before your partisan trend. And for what? Why have you entered upon this work of demolition? Again I say, for no other purpose but to try and create a shelter to which your executive can flee, and attempt to screen his unconstitutional acts.
The resolves of last year proposing the amendments, required that the votes of the people on them should be received, sorted, counted and declared in open ward, town and plantation meetings, and lists thereof forwarded to the Secretary of State's office, in the same manner as votes for Senators; and says the resolve, "the Governor and Council shall count the same and make return thereof to the next Legislature; and if a majority of the votes are in favor of any of the amendments, the constitution shall be amended accordingly."

Here one of the three co-ordinate branches of the State government, the Governor and Council, was required to perform a clearly defined duty, namely, to make an official count of the votes of the people on the constitutional amendments, that it might "appear," through some proper, official measure, whether or not the amendments, or any of them had been adopted by the people. For what earthly object were the Governor and Council required to count, but to ascertain, to make appear in due form, what had been the decision of the people. Surely the requirement of this duty was not an unmeaning ceremony, a senseless farce without object or aim, designed merely to "work up," as sailors say, the Governor and Council, to keep them out of idleness. No, sir, the legislature never intended to commit such an act of levity in connection with so grave a subject. The courtesies which are due from one department of government to another, and the self-respect which each owes to itself, exclude such an idea. This part of the resolves, requiring the Governor and Council to count and make return, is in the precise language of the five next preceding resolves proposing amendments to the constitution. In these several cases the count, and the only count, was made as required by the Governor and Council. It was to the times when these counts made it officially appear that the people had voted to adopt the several amendments that the resolves of the five legislatures refer, where they speak in the past tense, and declare that the amendments have become parts of the constitution. The legislature of last year then followed what had, by long usage, come to be an established form of proposing constitutional amendments, and providing how the results should be made to appear. These forms and usages were known to all who had given attention to the legislative history of its constitution. If these forms and usages are now to be set aside, and new theories and speculative opinions set up in their place, I repeat again, it will be done to subserve a low party purpose, and in violation of both law and constitution.

The Governor and Council did carefully count the votes as they were required to do by the law of the last legislature. A report of their doings on the subject was drawn up, entered on the journals of the executive council, and the report itself sent to the legislature and read in full from the speak-
have not voted directly on the question of striking out and inserting an independent question, they have not acted upon it at all, and have—therefore left the appointing power untouched. This is a late discovery, and was not relied on until recently to help the Governor out of his troubles, but as the other position grows weaker and weaker, and cannot be relied on as a justification for him, you would make master of us all, in his late acts of illegality and folly; you are trying to make this new and palpable fallacy more luminous and important in the hope that it may prove a means of escape, when all else has failed. The constitution gives no directions, points out no specified manner of putting questions on amendments to the constitution. It merely says, the legislature, whenever two thirds of both branches shall deem it necessary, may propose amendments to the constitution.

In proposing the questions to the people for their action, the legislature is left to adopt such formula as it may think best calculated to reach the object in view. The legislature had the right to propound the questions in the way they thought the most easy to be understood, and the most convenient to be voted on. Did the last legislature do this? If so, and the amendments were adopted by the people, and the result of their action on them made to appear, as required by the constitution, before the inauguration of the Governor, how can his interference and setting aside of these amendments be sustained, except on the old maxim of the “divine right of kings”—he is our Governor, and therefore “can do no wrong.” But, sir, let me direct the attention of the House for a moment to the manner in which the last legislature proposed the amendments to the people.

That legislature passed three resolves on the subject. In the first resolve, all the amendments on which the people were called to vote, are set out at length. The first paragraph in this resolve is as follows:

"Resolved, Two-thirds of both branches of the legislature concurring, that the constitution of this State shall be amended in the eighth section of the first part of the fifth article, by inserting after the words “judicial officers,” in the second line of said section, the words “except judges of probate, and municipal and police courts,” and by striking out the words “attorney general, the sheriffs, registers of probate” in second and third lines thereof, and by inserting after the words “provided for” in the seventh line of said section, the words “except the land agent.”

Here is a plain, direct, unmistakable proposal to the people to amend the constitution of our State, by striking out and inserting certain words for the very purpose and no other, of taking from the Governor the power of appointing judges of probate, judges of municipal and police courts, registers of probate, attorney general, SHERIFFS and land agent. This first resolve then goes on and proposes to the people to add two more sections to the fifth article of the constitution, and two to the ninth article, which sections make provision for the election of these officers by the people, for the time of the election, how they shall be elected, and how long they shall hold their several offices. &c.

Now, sir, how did the people vote on these several questions? In the first place, on the question of taking from the constitution the power of the Governor to appoint certain officers, then of electing them by the people, fixing their tenure of office, some act one year, others act two, and others act four years, electing them by a plurality vote, and fixing the time when they shall be elected. The second resolve explains how all these questions were to be, and were voted on. This resolve commences as follows:

"Resolved, that the aldermen of cities, and selectmen of the several towns, and the assessors of the several plantations in the State, are hereby empowered and directed to notify the inhabitants of their respective cities, towns and plantations, in the manner prescribed by law, at the annual meeting in September next, to give in their votes upon the amendments proposed in the foregoing resolve; and the question shall be, shall the constitution be amended as proposed by a resolve of the legislature, providing that the judges of probate, registers of probate, sheriffs, and municipal and police judges, shall be chosen by the people; and also providing that the land agent, attorney general and adjunct general, shall be chosen by the legislature, and the inhabitants of said cities, towns and plantations, shall vote by ballot on said questions of electing said officers, separately, those in favor of said amendments, respectively expressing it by the word "yes" upon their ballots, and those opposed to the amendments, respectively expressing it by the word "no" upon their ballots."

Is not this sufficiently plain? Cannot all who desire it, easily get at the truth, the purpose and effect of this resolve? The people were to vote on "the amendments proposed in the foregoing resolve," all of them. "Those in favor of said amendments, respectively expressing it by the word "yes" upon their ballots," and those opposed by the word "no," and the very first amendment proposed was to strike from the constitution certain words, and insert certain others, so as to take from the Governor the power of appointing certain officers, and make them elective. The legislature did not propose to the people, to be voted on separately and distinctly, the question of striking out and inserting the amendments proposed to the eighth section of the fifth article, as one separate and independent question. This could not be done without great risk of producing confusion and disorder in some parts of the proceeding. For example, had the question on striking out and inserting been put and voted on directly as an independent question, as the majority report indicates should have been done, and the people had voted
in the affirmative, and taken from the Governor the power of appointing the officers named in the amendments, and voted to elect only a portion of them by the people and the legislature, the power of the Governor to appoint would have been taken away, and the power to elect not conferred on the people. The legislature therefore took the safest course in proposing the questions as they were proposed and voted on. The questions were so proposed, that when the people voted to elect an officer by the people, they also voted on all the other questions proposed in reference to that officer, because they were required "to give in their votes on the amendments proposed in the foregoing resolve," and the first amendment proposed was the one taking from the Governor the power to appoint sheriffs and certain other officers, and making them elective. The people, therefore, when they voted to elect sheriffs and certain other officers by the people, decided also to strike the power of appointing them from the constitution—that they should hold their offices a specified length of time, from one to four years—that they should be elected by a plurality vote, and be elected on certain days. The amendments proposed to fill seven different offices by election, which were before filled by appointment from the Governor.

There were seven distinct and separate questions to be decided by the vote of the people in reference to each officer proposed to be elected by the people, and three for each of those to be elected by the legislature. The first question proposed for the decision of the people was the question of taking the power of appointing certain officers from the Governor; the next to elect four of the same officers by the people, and three by the legislature—third, to elect by a plurality vote—fourth, to fix their tenure of office—fifth, to fix the time of election—sixth, to determine when vacancies shall be filled by the people—and seventh, giving the Governor the power to appoint until the vacancies can be filled by the people. If all these questions were to be voted on separately, agreeably to the intimations of the committee, the town officers would have had to provide twenty-eight different ballot boxes for the reception of the votes thrown in reference to elections by the people, and nine for those in reference to elections by the legislature, making thirty-seven in all, a whole village of ballot boxes. Who, had he time to spare, would undertake to pilot a voter safely through such an intricate path, such a maze of difficulty and confusion? And yet such is the result to which the reasoning of the committee and others must lead us. The legislature of last year acted wisely to so frame their questions as to avoid these interminable difficulties. That legislature, in reference to the action of the people on the question of electing sheriffs, for illustration, said substantially and truly, in their second resolve, and the question on the foregoing amendments, all of them, remember, the question of taking from the Governor the power of appointment, fixing the tenure of office, &c., shall be, shall sheriffs be elected by the people?—In deciding this one question all the other questions in reference to sheriffs were decided with it. This is admitted by the committee in the resolves reported by them. The committee by their resolves propose to insert in the constitution all the amendments accepted by the people under the single question proposed to them of electing certain officers by the people or the legislature, except that of striking out and inserting. This will interfere with the prerogatives of the executive, and must therefore remain unaltered whatever the people may have decided. If a distinct vote on every proposition to be settled be necessary, then, sir, where do the committee find proof that the tenure of office was fixed by the people, or that they decided to elect by plurality vote, &c. No one of these questions was voted on separately, but all were decided affirmatively in the manner proposed by the legislature of last year, and neither the committee nor this legislature has the power to select from a list of questions which the people have, according to law, decided affirmatively, and say this amendment we will adopt, and declare the constitution amended accordingly, and this we will reject and shot out. All the amendments were adopted by the people, by a majority of about 5,000 votes, and you have no shadow of power to hold a single one of them back from its full operation.

But, sir, the committee is not only at war with the doctrines of its own report, in admitting that the people voted to fix the tenure of office, to elect by plurality vote, &c., when they voted on the question of electing certain officers by the people, but when it will answer their purpose and not disturb the repose of the council chamber, they admit the constitution to have been amended by "striking out and inserting," and in the third section of the seventh article, in reference to the election of adjutant general. This officer was, until the recent amendments to the constitution, appointed by the Governor. The amendments of the last legislature proposed to amend this section of the seventh article, by striking the appointing power from the constitution, and inserting in its place the power of election by the legislature. This amendment the committee adopt, and report the article drawn out at length as changed, and declare the constitution amended accordingly. The people gave no more direct vote on striking out and inserting in this case, than in the other, the one in reference to sheriffs, &c., and why does the committee and the legislature adopt one amendment and reject the other?

Is there any reason for such an inconsistent course, except that it is thought the repudiation of one may chance to help your jail-breaking executive out of his troubles, and the adoption of the other may be harmless? The majority, by at once incorporating this amendment into the con-
ituation, and rejecting the first amendment proposed, which stands on precisely the same foundation, have abandoned their own ground, and placed themselves in an attitude hostile to their own report. I hope, therefore, we shall hear no more from this meanest of all evasions and subterfuges. It could not last the committee until their report and resolves were completed, for we have the doctrine taught in the report, and its contrary affirmed in the resolves accompanying it. The resolves should be the results of the reasoning in the report, but here we have them in hostile attitudes, the one threatening and actually invading the dominion of the other.

Another position taken by the committee, is that the amendments do not take effect until the legislature and people actually vote under them, and therefore that they go into operation by instalments—a part when the legislature has elected attorney general, land agent and adjutant general; a second portion in the spring, when the people elect judges of municipal and police courts; and a third in the fall, when sheriffs, &c., are elected. By this doctrine, the constitution is not amended when you pass your declaratory resolves even, and you are engaged in a superfluous labor. After all your work is done, and you have declared by your act the constitution to be amended, the whole thing, according to this doctrine, will be only in an inchoate state, just beginning to be. The amendments which the people thought they had adopted, are, on this new discovery, but just struggling for existence, and cannot come into life until the spring puts forth its flowers, and the autumnal harvest bows to the reapers. But, sir, on what foundation do its friends pretend to rear this new system? or rather declaration, for it has not the merit of a theory, though ever so visionary. It is a barren declaration put forth, so far as we have yet heard or read, without a solitary reason to support it. Is there any countenance in the constitution for such an absurd idea? Can it be supported from precedent or analogy? I should like to hear such a herculean labor attempted. The article in the constitution pointing out the mode of making amendments thereto, closes in this language—

"And if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of the constitution."

Is there but one clear and sensible way of understanding this? Whenever it shall appear, be shown, be made known, that a majority of the people voted in favor of the amendments, such amendments are, at that moment, made a part of the constitution. The constitution does not say at some future day when action shall be had under them they shall be adopted, and until that day they shall lie dormant, half-formed, but growing into life, and can only be matured to their full proportions, and take their place in the constitution, when action is called for under them. No, sir, this is not the true reading, but a thin and shadowy invention raised in the hope, and a futile one it is, of screening the executive from the public frowns, as your other inventions fail. It is not the voting for police judges, sheriffs, &c., that makes these amendments parts of the constitution, but their adoption by the people, and the official appearance of the fact that they have adopted them. When this fact appears, as it has appeared in reference to the amendments under discussion, then the constitution is amended, not half amended, or begun to be amended, but amended fully and completely, ready for use and action under it. These amendments are as perfect now, and as much parts of the constitution as they will be one year from this time, and after the people have voted under them. As well might you say that any law, when against murder for example, was not fully completed, not fully a law until some committed murder and completed the adoption of the law by bringing it into active operation.

When, on this theory, was the third amendment adopted? That amendment cut down the tenure of all judicial officers from good behavior, until the judge was seventy years of age, to the limited time of seven years. According to our new constitutional expounders, this amendment was in embryo, in its minority, growing, struggling to become of age seven long years, before it got its growth and took its place in the constitution.—Can anything be imagined, more absurd? But one more illustration, and I leave a branch of the subject, which appears to me too plain for argument. The sixth amendment, adopted some years since, says: "The credit of the State shall not be directly or indirectly loaned in any case." On this new theory of constitutional law, when did this amendment become a part of the constitution? It is a prohibition on the legislature from ever loaning the State credit, and no action has ever been had under it, and from the nature of the case, ever will, or can be had under it. Like all other amendments, it went into effect immediately on its adoption, and has ever since prevented the legislature from loaning the State credit "in any case." It will not do to set aside the safe rule of the constitution to accommodate men and their schemes, not even the ambitious Governor Wells in his encroachments on the constitution to aggrandize the executive department. The rule laid down by the constitution for the adoption of amendments is clear, safe, and the only one to be followed. By this rule all amendments are completed, perfected, and stand ready for action under them the moment it is officially shown that they have been adopted by the people. This safe and only rule has been, to the very letter, complied with in the case before us. I repeat, the people voted on these amendments according to both constitution and law; the Governor and Council counted the votes as by law required, and showed by their report.
read from the chair some eight weeks ago, that the amendments were adopted by about five thousand majority. It surely then appeared and became known to the people of the State, that the amendments had been adopted, and regularly installed into the constitution. The whole thing is a perfected, finished transaction, and requires no action of either department of government, or of the people to complete it. The people may vote under and by virtue of the amendments, but they can do no more towards their adoption. All they had to do was finished last September, and all that your Governor, the legislature and the judiciary ought to do in reference to this question, is to obey the constitution as it stands to-day amended, fully and completely amended, not half amended, and depending on future contingencies for completion.

The last paragraph in the resolves reported by the committee, concerning these amendments to the constitution, closes as follows: "Until said offices shall be filled by elections under and by virtue of said amendments, the power of the Governor and Council in relation thereto will remain unchanged." What is this but a most extraordinary assumption of power, a direct attempt to suspend a provision of the constitution by legislative enactment? and for no other purpose but to increase the patronage of the executive, to keep alive for a time the power of discharge and appointment, which has been stricken by the people from the constitution. The constitution has limited the business of the legislative branch of the government to making laws. This is not, therefore a bench of judges—it is no part of our duty to construe and declare what the law means; that duty is left to another department of the government; and when we undertake to perform duties and seize upon powers which clearly belong to another distinct and independent branch of government, and are successful in that undertaking, we change the whole theory and practice of the government and introduce discord and confusion into a system heretofore thought to be well defined and guarded against encroachments of one branch upon another. But, sir, this sly and covert way of grasping the judicial powers of the government must fail. In defiance of this resolve, the question must go to the courts for a decision. It will get there in some way, even against the wish of the Governor and this legislature. The State will not be satisfied with the declarations of the Governor and this legislature of what the law is. We have got yet a judiciary, a department of government established for that purpose, and when that power passes upon the question, it will be settled one way or the other, and not till then if you pass a thousand resolves to construe the constitution and settle points of constitutional law.

You have no faith, Mr. Speaker, in the positions you are trying to stand upon—you feel that they are trembling beneath you, and are liable at any moment to give way, or you would not be so uneasily changing from one to another in pursuit of a firmer foothold. If you had any firm ground to stand upon you would be content to occupy it, and not be feeling about with sharp metaphysical fingers into every crevice of controversy for a loophole of escape—your resolves would not stand blushing at each other for their inconsistencies and antagonisms—your report and resolves would not be frowning at each other and pointing in different directions. The truth is simple, if we all try to place ourselves on its firm foundations we shall need no sophistry or tergiversation to reach it.

I have now, sir, reviewed the essential points in the present stage of the controversy. First, that the consent of the legislature by declaratory resolve is necessary to complete an amendment to the constitution. Second, the declaration that there was no direct vote on the question of striking the appointing power from the constitution; and third, the assumption that the people must vote under and by authority of the amendments before they can really become parts of the constitution. I have endeavored to controvert these new and experimental doctrines; with what success others must judge. I believe them to be wrong, and clearly against the spirit and letter of the constitution, a direct encroachment on the rights of the people for partizan purposes. It is an attempt to reverse the well established practice and law of the State—a practice which has been entirely safe and satisfactory to all parties and classes of men, from the establishment of our State government until the coalition, now dominant, have found it necessary to set it aside to increase their patronage and power. It is not a temporary thing that will cause a few days wonder and then pass away and be forgotten forever, but it will comprise a part of our history and go into our records, there to stand a pernicious and dangerous example, as long as our history and the archives of our State shall endure.