want John Smith, whose testimony I cannot get; he is in New York, and you can only take his testimony before the court, or send a commission. You send a commissioner there and he finds it difficult to find John Smith. There will be commissions taken out under this system as under the other, for you will always have the right to send abroad. And under the rules already prescribed in the code, which can be modified at any time by the legislature, when they work hardship, you can have all the expedition that the occasion requires.

I know it has always happened, where a lawyer has lost a cause, he is sure the jury was corrupt, or stupid, or the judge was wrong, or something of the kind, and he will go to the legislature and get a law passed to apply to his particular case. My colleague (Mr. Daniel) has met with some hardships, and he offers this amendment. My friend from Howard (Mr. Sands) has met with some hardships and he thinks this may remedy it in that divorce case of which he speaks. Possibly it might; and then it might operate injustice in a hundred other cases.

Mr. STIRLING. I agree with my colleague (Mr. Daniel) as to some of the evils of which he speaks. But I would like to know what this constitutional convention has to do with this subject? This is a matter regulating the practice of the courts. And we might as well go to work to fill up the constitution with the whole practice of the courts. And if all the lawyers would get up here and jaw about the details we might sit here until kingdom come.

Mr. DANIEL. The gentleman voted to go into all the details in regard to the public schools. I find that whenever it suits members to go into details they always do so; when it does not suit them to do so, then they say it is a matter for the legislature. I say that we have the example of New York, one of the largest States of this Union; and I suppose they had as good lawyers in their convention as ever were in any convention. The lawyers there put this in their constitution in very short phrase; and I think it is a very good precedent.

In reference to what has been suggested by gentlemen in reference to delay, that this amendment I have offered will cause more delay than the present practice. Now my experience has been different in reference to the trial of causes at law in comparison with the trial of causes in equity. You generally get through your case sooner at law than in equity, for you have a jury there and are assigned your time. And I do not see why you cannot take your testimony, every point that is to go up before the court of appeals, before the judge of the court below, or at the time of your trial in equity, just as you do at law. I know that sometimes in the trial of equity cases weeks and months are occupied in the trial of equity cases; whereas at law a great number of witnesses are examined in one day. I do not see any more reason for a long record in equity than at law. There are a great many questions and points that lawyers would waive when they come before the court of equity. They would certainly presume that the court knew something, whereas they presume that the commissioner knows nothing. And when these points are submitted to the court of equity and argued, they would waive them, and thus they would not go up to the court of appeals and increase the record. There is a section in this report that you may waive a jury at common law as well as in equity. And why should we reverse and alter the whole practice of the State heretofore, which has always required all matters of fact to go before a jury? And yet you think this is an anomaly and not to be put into the constitution, because it is properly a matter of legislation.

Mr. STIRLING. If we do not put in the constitution a provision permitting a question to be tried without a jury, you cannot do it at all; fifty thousand legislatures could not authorize it to be done, because the constitution guarantees the right of trial by jury; and you must put such a provision in your constitution or not have it at all.

Mr. DANIEL. Be that as it may, I think this will save expense and save delay, and will give the judge what has always been considered the very great advantage of seeing the witnesses and cross-examining them in his own presence. And I have no doubt that very frequently a case would be decided upon the justice and equity of the case in a different way if the court could see the witnesses upon the stand, hear them testify, see their manner, see them under the fire of cross-examination, by which you test not only his recollection, but his honesty and motives.

LEAVE OF ABSENCE.

Mr. DELLINGER asked and obtained leave of absence until Tuesday of next week.

Mr. RIDGELY asked and obtained leave of absence for his colleague (Mr. Berry, of Baltimore county,) on account of indisposition.

Mr. DAVIS, of Washington, moved that the convention take a recess.

The question being taken, upon a division—ayes 30, noes 25—it was agreed to.

And the convention accordingly took a recess.

EVENING SESSION.

The convention reassembled at 8 o'clock, P. M.

The roll was called, and the following members answered to their names:

Messrs. Goldsborough, President; Abbott, Annan, Audoun, Belt, Billingsley, Blackiston, Brown, Carter, Crawford, Cunningham,