I think, that instead of the expense being diminished, it has been vastly increased by their attempts at reforming law proceedings. The cost even of collecting a promissory note of $120 or $130 there, would amount to about double the sum recovered.

It seems to me that the difficulty in adopting this provision is this: In our State equity and common law jurisdictions have always been kept separate and distinct, and gentlemen forget that it is at last the court of appeals which in equity cases is to decide upon facts; and these facts must appear before that court upon the record. There may be some difficulty, and there is, in the court below in having testimony taken down before the witnesses; and the witnesses have to appear before the judge; and that testimony must in some way or other be embodied in the record and submitted to the appellate tribunal, because the court of appeals under our system of proceedure, when acting upon equity causes, is both judge and jury. That court must have the facts before them, in order to review the decision of the judge below in reference to the facts. Now, how is that to be brought about? Are we to go into the trial of a cause in equity, and raise exception after exception before the judge as to the competency of a witness, and have the testimony written down word for word, as it was delivered, and then have it embodied in the record, and sent up in the shape of exceptions as we do in a case at common law? It seems to me much simpler to have the testimony taken first before the commissioner, and then submitted to the judge, and then the same testimony, in the same form, submitted to the appellate court.

Now in reference to delays, that has been a charge against equity proceedings from time immemorial. That is not, however, it seems to me, an objection that should prevail. It is an objection which is not true in point of fact. I have had some experience in reference to equity causes, and have had some knowledge of equity causes coming into the appellate court, and so far as the records go of cases that come up to that appellate court and are decided there, I think I can safely say they have not been of so long standing as cases at common law.

Mr. THRUSTON. I know there are some evils in connection with our present system. But my objection to this amendment is that I think it would be extremely dangerous for us to attempt to make this change without seeing what the effect will be. The legislature has power to change it if necessary, and they can look into it and see how far it is necessary to change the equity system. Now it is very common, in applying for an injunction affecting great public interests, interests of large bodies of people, for the judges to grant this injunction upon terms; that is to say, with leave to move for a dissolution of the injunction upon five days' notice, and commission the parties in interest to take testimony. Here is an injunction upon stocks in certain manufactures: the judge says—I will grant the injunction upon the case stated upon the bill, but with leave to the other party to move for a dissolution upon five or ten days' notice, with leave to parties to take testimony. Suppose a case arises when the judge is absent. Is it for him to leave the county he may be in, and go there to take evidence? Or when there is a vacation of the court, when the judge is entirely occupied in determining how to decide certain questions? This is but one difficulty.

There are many difficulties that occur to my mind, showing that it is not proper to introduce such a change as this into the law, without providing in other ways for its effects. Judges will not sit upon the bench all day, and then sit up all night to take evidence in a case; and unless you can provide some mode for evidence to be taken at the time, injunctions of this character would be carried over until the county court sits for the testimony to be taken in court. I think it would be exceedingly dangerous to make any such change as this in this way, without seeing its effects, without providing for those effects, as they may affect our system of equity jurisdiction. I am therefore opposed to this amendment as a dangerous amendment.

The question being taken upon the amendment of Mr. DANIEL, it was rejected.

TRIAL OF CAUSES, ETC.

Mr. THRUSTON. I suppose it is the wish of this body to perfect this report as we go along, if it can be done. The ninth section was passed over this morning, because no amendment was proposed that covered the whole case. Since that period I have prepared an amendment, which I think will not be objected to. I would, therefore, ask the convention to take up section nine, for the purpose of enabling me to offer what is in effect a substitute for the whole section, which I think will suit the views of all parties.

The question being taken, the motion was agreed to.

Section nine was then read as follows:

"Sec. 9. The legislature shall provide for the trial of causes in case of the disqualification of all of the judges of the circuit, but the parties to any cause may, by consent, appoint a proper person to try said cause, and may try any cause before the court without the intervention of a jury."

The pending question was upon the motion of Mr. NEGLEY, to strike out the words "all of the judges" and insert "any judge."

Mr NEGLEY withdrew his amendment.

Mr. THRUSTON. I now move to strike out all after the word "the," in the first line, and insert: