Mr. CLARKE. My colleague and myself voted "No."

Mr. STIRLING. Then it will require a unanimous vote with the exception of two members to change them!

Mr. CUSHING. The record on the Journal, page 21, is this:

"Mr. Daniel called up for consideration the Report of the Committee on Rules, (page 49:)

"Said Report was then taken up, read the third time and concurred in, and the Rules as reported adopted as Rules for the government of the Convention."

Upon what does the gentleman base his assertion that the Rules were adopted by a majority of the members elected?

Mr. CLARKE. The Journal is silent with reference to the mode in which it was adopted; and it being silent, this becomes like a question of evidence. It becomes neccessary to go outside of the record and examine the facts, the *res gestae*. Now there were only two votes, so far as I know, cast against it. That being the fact, it results that they were adopted by a majority of the members elected to the Convention.

Mr. DANIEL. If they had been voted for then by a majority of those present, and not by a majority of those elected, would they not have been adopted?

Mr. CLARKE. I think not. I should have raised the same point of order then. I intended to do it, if the case arose. I took that view in committee that unless the Rules were adopted by a majority of the members elected, I should raise that point of order. But we were then acting under the Rules of the House of Delegates; and they may prescribe a different rule.

Mr. HEBB. The Rules under which these Rules were adopted were the Rules of the last House of Delegates; and the Rule requires a majority of the members present to adopt a report.

"Rule 28. All questions except on the final passage of a bill or a motion to suspend the Rules, or those otherwise herein provided for, shall be determined by a majority of the members present; those dividing in the affirmative rising in their places, those in the negative continuing in their seats, and so, *vice versa*, until a decision by the Speaker."

Mr. CLARKE. We have in all our proceedings assimilated reports coming from Standing Committees to bills on their final passage. We put this report through three readings. Therefore when it came up for final adoption, it came up as the passage of a bill would come up. Therefore I regard Rule 28 as not applying; but we adopted the report under Rule 29th, although we did not follow it out entirely. That Rule is:

"*Rule* 29. The question on the final passage of a bill shall always be determined by yeas and nays, which shall be recorded on the Journal; and unless it shall thus appear that a majority of the whole number of members elected to the House have voted in the affirmative, the bill shall be declared rejected."

Mr. HEBB. Then the Rules were not adopted at all.

Mr. CLARKE. Then I will raise the point whether these are our Rules.

Mr. CUSHING. Reports of Standing Committees we regarded as bills; but was not this a Special Committee?

Mr. CLARKE. I regard any report from a committee appointed here, as in the nature of a bill.

Mr. CUSHING. Then the report of the committee appointed to wait on Gen. Wallace and others and invite them here, was in the nature of a bill and should have been read three times.

Mr. CLARKE. They did not bring in a report.

Mr. CUSHING. The chairman of the committee reported to the Convention that they had performed the duty assigned them.

Mr. CLARKE. We had not then adopted the Rules. Probably if we had adopted the Rules, that would have had to go through three readings. I think the 29th Rule is the one under which the vote should have been taken; and if the President failed to call the yeas and nays, it was an omission to which any member might then have objected; but the decision of the Chair that they were adopted having been acquiesced in, it may be contended that that waived the irregularity, or the point might be taken with considerable weight that the Rules never have been adopted according to the Rules of the House of Delegates by which we were then governed. My last point is, that according to parliamentary practice, the same majority is required to reject or change a provision, as was required to adopt it; that is, in this case, a majority of the members elected.

Mr. DANIEL moved to lay the appeal on the table.

Mr. CLARKE demanded the yeas and nays, and they were ordered.

The question being taken, the result was—yeas 49; nays 30—as follows:

Yeas—Messrs. Goldsborough, Pres't; Abbott, Annan, Audoun, Baker, Berry of Balt. county, Brooks, Carter, Cunningham, Cushing, Daniel, Davis of Washington, Dellinger, Earle, Ecker, Farrow, Galloway, Greene, Hebb, Hoffman, Hopkins, Hopper, Jones of Cecil, Keefer, Kennard, King, Larsh, Markey, McComas, Mullikin, Murray, Negley, Noble, Nyman, Pugh, Robinette, Russell, Sands, Scott, Smith of Carroll, Sneary, Stirling, Sykes, Thomas, Thruston, Todd, Valliant, Wickard, Wooden—49.

Nays—Messrs. Barron, Berry of Prince George's Billingsley, Blackiston, Bond, Briscoe, Brown, Chambers, Clarke, Crawford, Davis of Charles, Duvall, Edelen, Harwood, Henkle, Hodson, Horsey, Johnson, Jones of