

## THIRTY-SIXTH DAY.

MONDAY, June 20, 1864.

The Convention met at 12 o'clock, M.

Prayer by the Rev. Mr. Owen.

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

Messrs. Goldsborough, President; Abbott, Annan, Audoun, Baker, Barron, Belt, Berry, of Baltimore county; Berry, of Prince George's, Billingsley, Blackiston, Bond, Biscoe, Brown, Carter, Chambers, Clarke, Crawford, Cunningham, Cushing, Daniel, Davis, of Charles, Davis, of Washington, Duvall, Earle, Ecker, Edelen, Farrow, Galloway, Harwood, Hatch, Hebb, Henkle, Hodson, Hoffman, Hollyday, Hopkins, Hopper, Horsey, Jones, of Somerset, Keefer, Kennard, King, Lee, Marbury, McComas, Mitchell, Miller, Morgan, Murray, Nyman, Parker, Parran, Pugh, Purnell, Robinette, Russell, Sands, Scott, Smith, of Dorchester, Smith, of Worcester, Sneary, Stirling, Stockbridge, Sykes, Thomas, Valliant, Wickard, Wood—69.

The journal of Friday last was read and approved.

## MISCELLANEOUS.

Mr. HATCH offered the following:

Ordered, That the following article be referred to the Judiciary Committee:

"That no officer of the Federal or State Government shall be held responsible for any act done by him under the authority of the Federal Government, provided said act was in conformity with such authority."

The question was taken upon the adoption of the order, and it was declared to be rejected.

Mr. HATCH called for a division of the House upon the question.

The President: It is too late to ask for a division; the result of the vote has been already announced.

Mr. STIRLING. My impression was that the universal custom in this House has been to refer every order of this kind to a committee, as a matter of courtesy.

Mr. BERRY, of Prince George's. My objection to the order is that it does not conform to the form of those orders which are usually referred to our committees. I have no objection at all to any latitude being given to members of this Convention in referring anything they may desire to have referred to committees for inquiry. The orders heretofore have read—that the committee be instructed to inquire into the expediency of inserting such or such a clause into the Constitution. But this order is entirely different, and if we vote for its reference, it might be construed that we were in favor of inserting that article as a part of the Constitution of the State.

The President. The vote upon the adoption of the order having been announced; it

can only be reached by a motion to reconsider.

Mr. THOMAS moved a reconsideration of the vote just taken.

Mr. CLARKE. I would rise to a point of order. I would ask if the gentleman voted with the majority.

Mr. THOMAS. I did not vote at all. If I had voted I should have voted in the affirmative for the reference.

Mr. CLARKE. I have no doubt if the gentleman had said nothing at all, the presumption would have been that he had voted with the majority in the negative. But I think it is carrying the law of presumption further than I have ever heard, to assume that the gentleman voted with the majority, in face of the declaration that he had not voted at all.

Mr. CUSHING. In order to rid the subject of any embarrassment I will move a reconsideration. I did not vote in the affirmative, and the gentleman from Prince George's, (Mr. Clarke,) has told us that the presumption is that I voted in the negative.

Mr. BERRY, of Prince Georges, called for the yeas and nays on the motion to reconsider.

Mr. CLARKE. I rise to a point of order; this presents a new question. I understand that our rule requires that a member moving a reconsideration must have voted with the majority.

Mr. CUSHING. The gentleman said that the presumption was that I did so vote.

Mr. CLARKE. When a witness is upon the stand, the law does not admit presumption, as the party himself is the best evidence. Presumption comes in only when the best evidence fails.

The President. The chair supposes that the gentleman from Baltimore city, (Mr. Cushing,) voted in the negative.

Mr. CUSHING. I have not said that I did not.

Mr. PUGH. I am here, as a member of this Convention. I did not vote upon the adoption of this order; that was my fault, probably. The majority of this House cast a certain vote. Now I raise the point, whether it is not fair to presume that all the members, who are silent in a deliberative body when a vote is taken, are with the majority. For instance, when a bill is on its passage in the Legislature, it very frequently happens that no one votes, no one answers. But it is presumed that every body voted "aye," not "no"—voted with the majority. Yet according to the point raised by the gentleman from Prince George's, (Mr. Clarke,) if any one wanted the passage of such a bill reconsidered, it could not be done, because no one when asked the question, could say he had voted at all, and consequently no reconsideration could be had, and the bill would become a law beyond any chance to reconsider.