

tion, and shall wait for fifteen days after the day on which the State vote is taken, so as to allow the returns of the soldiers' vote to be made, before the result of the whole vote is announced. The governor shall receive the returns of the soldiers' vote on said election for State officers, presidential electors, and members of congress, and shall count the same with the aggregate home vote on State officers, and the aggregate home vote in each district respectively for members of Congress."

Mr. STIRLING moved to amend the section by adding thereto the following:

"And the governor shall exclude from count the votes of any county or city, the return judges of which shall fail to certify in the returns as provided by this schedule, that all persons who have voted have taken the oath prescribed to be taken, unless the governor shall be satisfied that such oath was actually administered, and that the failure to make the certificate has been from inadvertence or mistake."

The question being then taken, the amendment was adopted.

The section as amended was then adopted.

Mr. DUVAL. I move to add the following as an additional section:

"The style of this State on the adoption of this constitution shall be 'South Massachusetts'; and the committee on revision are hereby authorized to erase —"

The PRESIDENT. That is out of order.

Mr. EDLEN. According to notice already given, I offer the following as an additional section:

"Sec. — The obligation of the judges of election to administer the oath required in section 2, shall only exist in those cases where the vote of the person offering to vote may be challenged."

Had not this previous question been called when we were considering section two, I should have offered this as an amendment to that section. I do not know what ground was taken by the chairman of the committee on the schedule (Mr. Ridgely) in the discussion last evening. But so far as I observed the course of the discussion this morning, the great bulk, I might say almost the whole of it, was of a political character, and with the exception of the argument of the gentleman from Baltimore city (Mr. Daniel), in my humble judgment very little of that discussion was applicable to the question before the house for consideration.

I understood that gentleman to base the right of this constitution to incorporate this oath in this constitution, and make it operative upon the people when they came to vote upon the adoption or rejection of this constitution, he based it upon the sixth section of the convention bill; the latter clause of it, which reads: "and the provisions hereinbefore contained for the qualification of voters, and the holding of the elections provided in

the previous sections of this act, shall be applicable to the election to be held under this section"—that is, when this constitution is submitted to the people.

Now, while I do not concede the ground taken by him to be true, valid, and tenable ground, I make this point: And I insist that the gentleman from Baltimore city (Mr. Daniel) and those who hold the opinions that he entertains upon this question, shall be compelled, by logical consistency at least, to vote for the provision, I now propose to incorporate in this report as an independent section. My friend from Baltimore city (Mr. Daniel) then proceeded to read the concluding portion of section one of the convention bill, which is in these words:

"—and the judges of election shall at said election administer the oath or affirmation to every person offering to vote, whose vote shall be challenged on the ground," etc.

Now the sum and substance of the proposition I have offered is, that it shall be the duty of the judges to administer this oath to a voter only in case where his vote is challenged. I plant myself upon the doctrine that gentlemen upon the majority side of this convention have assumed upon this question; that they derive their whole power and authority to incorporate this provision in the constitution solely from the concluding portion of the first section of this convention bill.

Now I need not tell my friend from Baltimore city (Mr. Daniel) that it is a plain and incontrovertible proposition of law that in the construing of all penal enactments you are to be held to a strict construction. And I submit to him, as a lawyer, whether he can take one part of this section and plant himself upon it, and in the very same breath reject another and a very important part of the same section. And I submit here that all these outside oaths, which the judges in the several election districts propounded to voters on the 6th day of April last, were directly in the teeth of, and in contravention of the language of this first section. For this section makes it their clear and imperative duty to administer this oath, and exclude votes upon the grounds set forth, only when the vote is challenged.

And I will remark here that in our county, cavalry came there with the written instructions, and they acted upon that ground in two precincts, that they would not require the judges to put the oath to any man except where he was challenged. And a refusal to take the oath after challenge in two precincts was made the ground for arrest. In another precinct it merely deprived the man of his vote, without causing his arrest.

My friend from Baltimore city (Mr. Daniel) in answer to a question which I put to him, whether the oath which is required to be taken by this schedule, differed from that